



Inquiry into Natural Gas Liquids (NGL) Extraction Matters

February 4, 2009

ALBERTA ENERGY AND UTILITIES BOARD

Decision 2009-009: Inquiry into Natural Gas Liquids (NGL) Extraction Matters
Application No. 1513726

February 4, 2009

Published by

Alberta Energy and Utilities Board
640 – 5 Avenue SW
Calgary, Alberta
T2P 3G4

Telephone: (403) 297-8311

Fax: (403) 297-7040

Web sites: www.auc.ab.ca
 www.ercb.ca

Contents

I	INTRODUCTION.....	1
1.1	Inquiry Process.....	2
1.2	Inquiry Background	4
1.2.1	Background on the NGL Industry.....	4
1.2.1.1	Sources of NGL	4
1.2.1.2	Development of the NGL Industry	5
1.2.1.3	Present.....	8
1.2.2	History of NGL Extraction rights	11
1.2.2.1	Development of Extraction Rights on NGTL	11
1.2.2.2	Development of Extraction Rights on ATCO Pipelines and AltaGas Utilities.....	12
1.2.3	Current NGL Extraction Conventions	12
1.2.3.1	NGTL Current Convention	12
1.2.3.2	ATCO Pipelines Current Convention	14
1.2.3.3	AltaGas Utilities Current Convention.....	15
1.2.4	Need to Review Extraction Convention on NGTL.....	15
1.2.4.1	NECTF Alternatives to the Current Convention	18
1.2.5	Co-Streaming and Side-Streaming	19
1.2.6	Lean Gas Streaming.....	21
1.3	Reasons for Inquiry	21
1.4	Inquiry Scope	22
1.4.1	Form of Board Findings.....	24
1.4.2	Inquiry Expert.....	25
1.5	Inquiry Procedural Matters - Motions and Rulings.....	26
2	PRELIMINARY ISSUE - WEIGHT TO BE GIVEN UNSPONSORED EVIDENCE	26
3	MATTERS TO BE ADDRESSED IN THE INQUIRY DECISION	27
4	SUPPLY AND DEMAND	27
4.1	Views of Inquiry Expert and Participants	27
4.2	Board Conclusions	32
5	NGL EXTRACTION CONVENTIONS	37
5.1	Impetus for Considering a Convention Change on NGTL	38
5.1.1	Supporters of the Current Convention	38

5.1.2	Supporters of Changing to a Receipt Point Convention	39
5.2	Convention Alternatives.....	42
5.2.1	NEXT Model	43
5.2.1.1	NGTL's Operational Concept of the NEXT Model	44
5.2.1.2	NGTL's Cost Analysis of the NEXT Model	47
5.2.1.3	NGTL's NEXT Model Implementation Proposal.....	47
5.2.1.4	NGTL's Explanation of the Benefits of Adopting the NEXT Model 48	
5.2.1.5	Positions of Parties Respecting NEXT Model.....	50
5.2.1.5.1	Producer Access to NGL Value	50
5.2.1.5.2	Availability and Reliability of Pricing Information for NGL	53
5.2.1.5.3	Impact to Delivery Shippers.....	53
5.2.1.5.4	Gas Contracts and NIT	53
5.2.1.5.5	Costs	55
5.2.1.5.6	Impact on NGTL Throughput	58
5.2.1.5.7	Contracts with Extraction Plants	59
5.2.1.5.8	Regulatory Agency	60
5.2.1.5.9	Value to Producers versus Receipt Shippers.....	60
5.2.1.5.10	Transition Timing and Potential Compensation.....	61
5.2.1.5.11	Next Steps in the Event Board Recommends Adoption of NEXT Model.....	61
5.2.2	Imperial/EMC Model.....	62
5.2.2.1	Imperial/EMC's Operational Concept of CCM Model	63
5.2.2.2	Imperial/EMC's Cost Analysis of CCM Model	66
5.2.2.3	Imperial/EMC's CCM Model Implementation Proposal.....	67
5.2.2.4	Positions of Parties Respecting the CCM Model.....	67
5.2.3	Shell Heating Value Allocation Model.....	68
5.2.4	Gas Equalization Model.....	69
5.2.4.1	Operational Concept of the Gas Equalization Model	69
5.2.5	Positions of Parties Respecting the Gas Equalization Model	70
5.3	Board Conclusions and Recommendations With Respect to Extraction Rights.....	71
5.3.1	NGL Ownership Rights	71
5.3.2	Supply and Demand Implications.....	72
5.3.3	Considerations Regarding a Potential Convention Change	74

5.3.3.1	Impact to NIT	74
5.3.3.2	Upset to System Operations.....	76
5.3.3.3	Financial Effects on Other Parties of a Change in Convention	76
5.3.3.4	Costs of a Change to the Current Convention	77
5.3.3.5	Conclusion With Respect to the Need for Change the Current Convention.....	80
5.3.4	Convention Alternatives	81
5.3.4.1	Gas Equalization Model.....	81
5.3.4.2	Shell Model.....	81
5.3.4.3	NEXT and CCM Models	82
5.3.5	Convention Change Implementation Timing and Compensation.....	85
5.3.6	Applicability to Other Pipelines.....	85
5.3.7	Implementation Recommendations and Next Steps	86
5.3.8	Alliance Pipeline.....	87
5.3.9	Industrial Development Permits	88
6	LEAN GAS STREAMING.....	88
6.1	Views of Inquiry Participants.....	88
6.2	Board Conclusions and Recommendations.....	93
7	CO-STREAMING AND SIDE-STREAMING.....	95
7.1	Views of Inquiry Participants.....	96
7.2	Board Conclusions and Recommendations.....	104
8	SUMMARY OF BOARD CONCLUSIONS AND RECOMMENDATIONS	107
8.1	NGL Extraction Conventions.....	107
8.2	Lean Gas Streaming	108
8.3	Co-Streaming and Side-Streaming.....	108
	APPENDIX 1 – HEARING PARTICIPANTS.....	111
	APPENDIX 2 – ABBREVIATIONS AND DEFINITIONS	115
	APPENDIX 3 – JUNE 4, 2007 NOTICE.....	118
	APPENDIX 4 – FINAL SCOPING DOCUMENT JULY 6, 2007	118
	APPENDIX 5 – INQUIRY PROCEDURAL MATTERS – MOTIONS AND RULINGS. 119	
a)	Shell Motion to Compel Better Information Responses	119
b)	Shell Request for Scope Clarification	119

c) WEG/Tenaska Request for Clarification	121
d) SPG Preliminary Matter Regarding Un-sponsored Evidence.....	121
e) Late Requests to Participate.....	122
f) Motions with Respect to the Consideration of New Matters by the Inquiry Expert.....	123
g) Ruling Regarding Impact of Application by TCPL to the NEB.....	124
h) Ruling Regarding Motion and Notice of Question of Constitutional Law.....	125
APPENDIX 6 – PRELIMINARY ISSUE – WEIGHT TO BE GIVEN UNSPONSORED EVIDENCE	127
a) Views of Participants	130
b) Board Conclusions.....	134
Supported but Un-sponsored Evidence	134
Unsupported and Un-sponsored Evidence	135
APPENDIX 7 – RULING REGARDING MOTION AND QUESTION OF CONSTITUTIONAL LAW	138
APPENDIX 8 – SPG PRELIMINARY MATTER REGARDING UNSPONSORED EVIDENCE	138
APPENDIX 9 – SHELL MOTION TO COMPEL BETTER RESPONSES TO SHELL INFORMATION REQUESTS TO THE STRADDLE PLANT GROUP	138
APPENDIX 10 – SHELL REQUEST FOR DIRECTION AS TO THE SCOPE OF THE INQUIRY	138
APPENDIX 11 – NEW MATTERS SUBMISSION BY ZIFF ENERGY MOTION BY NOVA GAS TRANSMISSION LTD.	138
APPENDIX 12 – BOARD PROCEDURAL RULING REGARDING IMPACT OF THE APPLICATION BY TCPL TO THE NEB.....	139
APPENDIX 13 – RULING REGARDING MOTION AND NOTICE OF QUESTION OF CONSTITUTIONAL LAW	139

List of Figures

Figure 1: Map of Major NGL Extraction and Processing Facilities.....	10
Figure 2: Net Natural Gas Supply Available for NGL Extraction.....	28
Figure 3: Comparison of Natural Gas Supply and Demand Forecasts	33
Figure 4: Comparison of Ethane Supply and Demand Forecasts	34
Figure 5: Comparison of C ₃₊ Supply and Demand Forecasts.....	36

List of Tables

Table 1: Inquiry Process.....	3
Table 2: Current Straddle Plants	9
Table 3: Historical and Forecast NGTL System Flows	31
Table 4: Late Participation Requests.....	122
Table 5: Parties Submitting Supported but Unsponsored Evidence	128



ALBERTA ENERGY AND UTILITIES BOARD

Calgary Alberta

INQUIRY INTO NATURAL GAS LIQUIDS (NGL) EXTRACTION MATTERS

**Decision 2009-009
Application No. 1513726**

1 INTRODUCTION

On June 4, 2007, the Alberta Energy and Utilities Board (EUB or Board) pursuant to Section 21 of the *Energy Resources Conservation Act* RSA 2000, c. E-10 (ERCA), Section 94 of the *Oil and Gas Conservation Act* RSA 2000, c. O-6 (OGCA) and Section 46(1) of the *Public Utilities Board Act* RSA 2000, c. P-45 published a notice (Notice)¹ initiating an inquiry into matters related to natural gas liquids (NGL) extraction from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (the Inquiry). The referenced legislation has subsequently been amended, in particular to discontinue the Board and to create two successor public tribunals, the Energy Resources Conservation Board (ERCB) and the Alberta Utilities Commission (AUC or Commission), effective January 1, 2008. Pursuant however to Section 80(3) of the *Alberta Utilities Commission Act* c. A-37.2, the Board is continued and directed to proceed with matters for which a notice of hearing had been issued, but which had not been completed on the coming into force of the legislation on January 1, 2008. Accordingly, the Board continued with the Inquiry and now issues its Decision.

The purpose of the Inquiry was described in the Notice as follows:

The evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and the related gas, transportation and NGL markets since the implementation of the Alberta Ethane Policy in July 1990 (set to expire June 30, 2008) have convinced the Board that there is a need for a timely and comprehensive re-examination of historical conventions and practices with respect to the extraction of NGLs on EUB regulated pipelines and facilities. The need for such a review is made further apparent in light of anticipated future developments including the use of EUB regulated pipelines to transport increased amounts of gas sourced outside of Alberta, development of sources of CBM and the growing market for gas within the Province. This Inquiry will consider these conventions and practices to determine if changes are required in the public interest.²

In defining the purposes of the Inquiry and in issuing this Decision, the Board relies on the provisions of its governing legislation, including without limitation, the sections referred to above, and Section 2 of the ERCA and Section 4(c) of the OGCA. These latter provisions, when considered in their legislative context, provide direction and guidance on the role of the Board and the public interest purposes of its governing legislation:

¹ Exhibit 001-01, Notice of Inquiry dated June 4, 2007 (attached as Appendix 3)

² Ibid, page 2

ERCA

2. The purposes of this Act are

- (a) to provide for the appraisal of the reserves and productive capacity of energy resources and energy in Alberta;
- (b) to provide for the appraisal of the requirements for energy resources and energy in Alberta and of markets outside Alberta for Alberta energy resources or energy;
- (c) to effect the conservation of, and to prevent the waste of, the energy resources of Alberta;
- (d) to control pollution and ensure environment conservation in the exploration for, processing, development and transportation of energy resources and energy;
- (e) to secure the observance of safe and efficient practices in the exploration for, processing, development and transportation of the energy resources of Alberta; ...

OGCA

4. The purposes of this Act are

- (a) to effect the conservation of, and to prevent the waste of, the oil and gas resources of Alberta;...
- (c) to provide for the economic, orderly and efficient development in the public interest of the oil and gas resources of Alberta;
- (d) to afford each owner the opportunity of obtaining the owner's share of the production of oil or gas from any pool;...

1.1 Inquiry Process

The Notice of the Inquiry was sent to all parties on the EUB's distribution lists for ATCO Pipelines, NOVA Gas Transmission Ltd. (NGTL) and AltaGas Utilities Inc. (AltaGas Utilities). The Notice was also published in the Calgary Herald and Edmonton Journal on June 7, 2007 and other Alberta, British Columbia, Nunavut and Alaska newspapers between June 8 and June 11, 2007. The Notice referenced a Preliminary Scoping Document, a Preliminary List of Issues and a tentative procedural schedule and invited parties to register their intention to participate and provide comments on the scope and issues by June 15, 2007.

The Scoping Document and List of Issues was finalized in the Board's letter of July 6, 2007, as shown in Appendix 4 attached hereto, and was distributed to all parties who registered their intention to participate. This letter also helped to clarify the role of the independent Inquiry Expert. The scope of the Inquiry was further clarified by the Board's letter of February 1, 2008, attached as Appendix 10, which responded to a request from Shell Canada Energy, Shell Energy North America (Canada) Inc., Shell Canada Products, and Shell Chemicals Canada Ltd. (collectively referred to as Shell) participating in this Inquiry.

The Board's July 6, 2007 letter also clarified that the intended outcomes of the Inquiry may include any of the following:

- A description of current or proposed NGL extraction conventions on EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines (NGL Extraction Conventions), current issues and trends in gas supply, composition and NGL recovery;
- Findings as to entitlement to NGL extraction rights with respect to the common stream of EUB regulated pipelines;

- Direction to parties to implement changes to NGL Extraction Conventions including tariff amendments;
- Guidelines or other criteria to assist industry with respect to the economic, orderly and efficient development of Alberta's natural resources as it may relate to NGL extraction rights and facilities development including matters related to side-streaming and co-streaming;
- The identification of new conditions for new facility licenses, permits or approvals; and
- Potential recommendations to the Government of Alberta on policy matters beyond the mandate of the Board.

Inquiry participants represented a broad range of interested parties including large, medium and to some degree small natural gas producers, parties holding regulated natural gas transportation services, pipeline companies, industry associations, owners of NGL straddle plants and fractionation facilities, owners of field NGL extraction facilities, owners of NGL midstream transmission and infrastructure facilities, petrochemical producers and governments. A list of participants in the Inquiry, other than the late participants discussed in Section 1.5 and Appendix 5, is attached as Appendix 1. The Inquiry was a voluntary proceeding to which neither cost claim nor intervenor funding processes applied and all costs incurred by parties were for their own account. Both the breadth and diversity of participants, despite the lack of funding support, demonstrated the significance of the issues before the Board for consideration.

The Inquiry process included the filing of evidentiary submissions by all interested parties including information requests, responses and rebuttal submissions. This was followed by submissions of Ziff Energy Group (Ziff Energy) as the Inquiry Expert³ and the opportunity for information requests, responses and rebuttal to that submission. The written evidentiary and discovery portion of the Inquiry was detailed, as set out in Table 1.

Table 1: Inquiry Process

Step	Date(s) (2007) unless specified)
Inquiry Notice and Scope Submission Request	June 4
Scope Submissions Due	June 15
Inquiry Scope Finalized	July 6
Parties Submissions (simultaneous)	August 28
Information Requests to Parties	September 18
Information Responses	October 9
Rebuttal Submissions	November 6
Inquiry Expert Submission	November 20 and 27
Information Requests to Inquiry Expert	December 13
Information Responses	January 11, 2008
Rebuttal to Inquiry Expert Evidence	January 28, 2008

In a letter of January 24, 2008, the Board confirmed that the Inquiry would continue as a EUB proceeding under the transitional provisions of the *Alberta Utilities Commission Act*, although certain members of the division of the Board and support staff also had AUC or ERCB

³ The purpose and role of the Inquiry Expert is discussed in Section 1.4.2

responsibilities. The Inquiry Panel was comprised of B. T. McManus, Q.C. (Presiding Member), Carolyn Dahl Rees and Gerry DeSorcy (Acting Member).

On September 24, 2007, the Board established the commencement date for the oral portion of the Inquiry as Tuesday February 5, 2008. On January 14, 2008, in light of the extensive evidence filed and the number of witness panels being presented for cross-examination, the Board decided to divide the oral portion of the Inquiry into two parts. Part 1 proceeded as planned, commencing February 5, 2008, to deal with the registration of appearances, preliminary matters and the cross-examination of the Inquiry Expert witnesses. Part 2 commenced May 27, 2008, for cross-examination of the Participant witness panels.

The two phases of the oral portion of the Inquiry lasted 27 days with the Board sitting between February 5 to 12, 2008, for Part 1 and between May 27 and July 18 for Part 2. The Inquiry concluded with written argument on September 5, 2008, and written reply argument on September 26, 2008. The evidentiary record compiled during the course of the Inquiry is extensive. For the purposes of this proceeding, the Board considers that the record closed on September 26, 2008.

Section 1.5 and Appendix 5 provide descriptions of procedural matters including the Motions and Rulings that were made during the course of the Inquiry.

Definitions of many of the terms used throughout this Decision can be found in Appendix 2 "Abbreviations and Definitions".

1.2 Inquiry Background

This section of the Decision:

- describes the NGL industry and its history;
- discusses NGL extraction rights, the related history and the current extraction convention;
- introduces and discusses the subjects of co-streaming, side-streaming and lean gas streaming;
- sets out in greater detail the reasons for this Inquiry, its scope and the process used; and
- reviews a number of administrative and jurisdictional matters that arose during the Inquiry and the period leading up to it.

1.2.1 Background on the NGL Industry

What follows is a high-level description of the development of the NGL industry in Alberta to provide context for the reader. It is not intended to be complete with respect to all details of the complicated chain of events and circumstances that have contributed to the development of the NGL industry in Alberta.

1.2.1.1 Sources of NGL

Produced natural gas is primarily methane, but it also contains heavier hydrocarbons consisting of ethane (C₂), propane (C₃), butanes (C₄), and pentanes and heavier hydrocarbons (typically referred to as pentanes plus or C₅₊), all of which are referred to as NGL. Natural gas also contains water and contaminants such as carbon dioxide (CO₂) and hydrogen sulphide (H₂S). In Alberta, all ethane production, the majority of propane and butanes production and all pentanes plus production is from the natural gas stream. Other sources of NGL supply are from crude oil refineries where small volumes of propane and butanes are recovered, and from gases produced as by-products of bitumen upgrading. Off-gases are a mixture of hydrogen and light gases,

including ethane, propane and butanes. The majority of the off-gases produced from oil sands upgraders are presently being used as fuel for oil sands operations.

Field gas processing facilities ensure that natural gas meets the quality specifications of the rate regulated natural gas pipeline systems and this may require removal of NGL to pipeline hydrocarbon dewpoint specifications as well as removal of other gas contaminants. The field plants may also recover additional volumes of NGL depending on the capability of the plant and the economics of NGL extraction and marketing. Generally, it is the heavier hydrocarbon constituents (butanes and pentanes plus) that must be removed at field plants, with the removal of lighter components dependent on economics. Fractionation of the NGL into pure products may take place at field plants, but may also occur at more centralized NGL fractionation plants. These centralized, large scale NGL processing facilities realize economies of scale by fractionating NGL mix streams received from many gas plants.

Gas processing plants for NGL extraction, referred to as straddle plants, are located on rate regulated main gas transmission pipelines and process gas (that may have been processed in the field) to recover NGL that remain in the common gas stream. These plants remove much of the propane plus (C₃₊) and ethane volumes, with the degree of recovery being determined by the plant's extraction capability, contractual arrangements and product demand. In 2007, 76 percent of Alberta ethane production occurred at straddle plants.⁴ In the same year straddle plants were responsible for recovering 51 percent of propane supply, 33 percent of butanes production and 9 percent of pentanes plus production in the province.⁵

1.2.1.2 Development of the NGL Industry

Alberta NGL production began in the 1950s when NGL were removed from natural gas at field gas processing plants primarily for the purpose of meeting pipeline hydrocarbon dewpoint specifications. Ethane initially did not have a market and was left in the gas stream. Propane could be sold as heating fuel and butanes and pentanes plus were used primarily as motor fuel feedstocks. The first NGL product pipelines were constructed to move propane, butanes and pentanes plus from Imperial Oil's Devon gas plant to Edmonton. In the 1960s the first straddle plant was built in Edmonton, by Steelman Gas Ltd., and a second plant at Empress was built by Pacific Petroleum Limited in 1964.⁶ The construction of a liquefied petroleum gas pipeline by Petroleum Transmission Company followed to allow movement of propane and butanes from Empress to Fort Whyte, Manitoba as new markets developed.

Expanding gas production combined with a strong demand for NGL led to sizable gas plant additions. New field plants were constructed at Judy Creek, Harmatton, Edson, Kaybob, and Caroline that were designed with higher propane and butanes extraction capabilities than had previously been the case. Also, many existing plants had their propane and butanes extraction capabilities increased.

Additional liquids recovery capability was added with the construction of a third straddle plant at Cochrane in 1970. Natural gas exported from western Alberta had up until that point been

⁴ ERCB ST-98-2008, *Alberta's Energy Reserves 2007 and Supply/Demand Outlook 2008-2017*, Natural Gas Liquids Section, page 6.6, Table 6.3 "Ethane extraction volumes at gas plants in Alberta, 2007" which is the current version of the document referenced at page 6-22 of the Inquiry Expert report Exhibit 04-05-01

⁵ ERCB ST-13, *Alberta Gas Plant/Gathering System Activities*. Includes the individual components of NGL mix streams recovered at Alberta straddle plants referenced at page 6-20 of the Inquiry Expert report Exhibit 04-05-01

⁶ Ownership transferred to PetroCanada from 1979-2000, Conoco ownership from 2000-2002, ConocoPhillips ownership from 2002-2005, Duke Energy (now Spectra Energy Empress Management) from 2005-current.

transported with relatively high volumes of liquids entrained in the gas stream. The addition of this plant included a new liquids pipeline (Co-Ed) to deliver propane and butanes from Cochrane to Edmonton. Once at Edmonton, the liquids could be delivered into the Interprovincial Pipe Line (IPL, now Enbridge) system for shipments to Sarnia, Ontario where fractionation facilities were located. Concurrently, expansion of the TransCanada Pipelines Ltd. (TCPL) mainline system increased demand for exports of Alberta natural gas at Empress, thereby encouraging further straddle plant development at Empress as discussed below.

As is the case today, the market for ethane in North America at that time was primarily for feedstock for ethylene production. There was only one petrochemical facility in the Province that used ethane. The Canadian Industries Limited ethylene/polyethylene plant built in the 1950s in Edmonton used ethane recovered from the gas stream from the Judy Creek gas plant.

During the 1970s, the Alberta Government was actively encouraging economic diversification of the provincial economy. In a letter written by the Honorable R.W. Dowling, Minister of Business Development and Tourism, dated September 19, 1975, the Alberta government pledged that it would take steps to provide for the extraction of ethane from natural gas leaving the province on reasonable terms.⁷ Dome Petroleum Limited (Dome), in partnership with Dow Chemical of Canada Inc. (Dow), began to put together a large-scale plan to use Alberta ethane to produce ethylene in Alberta. The Alberta Gas Trunk Line Company (AGTL), now NGTL, also brought forward its own ethylene proposal. Both plans considered that large volumes of ethane supply could be available at relatively low costs and that large, efficient ethylene plants could be built using the latest technology. Dome/Dow and AGTL joined forces when it became clear that both proposals could not proceed and this partnership resulted in the creation of the Alberta Ethane Ethylene Project (AEEP) in 1976. The new Alberta ethane/ethylene industry included: four straddle plants, including a new plant at Empress operated by Pacific Petroleums Limited, subsequently purchased by PetroCanada; an ethylene plant at Joffre (which commenced production in 1979); an ethylene pipeline from Joffre to derivative plants in Fort Saskatchewan; ethane and ethylene storage in Fort Saskatchewan; the Alberta Ethane Gathering System (AEGS) pipeline connecting the straddle plants to the ethylene plant at Joffre and to ethane storage at Fort Saskatchewan; four ethylene derivative plants; and a pipeline system (Cochin) to move propane plus, ethane and ethylene out of the province, which was completed in 1978.

Turbo-expander technology was added to the older straddle plant facilities in order to increase the supplies of ethane. Ethane recovered at Shell Canada Limited's Waterton gas plant was also added as part of the supply available to the ethylene plant. The Alberta Gas Ethylene Corporation (AGEC) owned and operated the Joffre ethylene plant and Dome operated the AEGS.

To be successful, AEEP required inexpensive and plentiful ethane supply based on long-term cost of service priced contracts. The ethylene plant and straddle plant owners signed 20 year agreements expiring in 1998. The straddle plants secured the right to extract ethane from the major natural gas shippers on the AGTL system which were primarily gas aggregators. The price paid for the extracted ethane by the ethylene plant was based on the cost of service of extraction and the heat equivalent, or shrinkage price, of gas leaving the province. At that time, the ex-Alberta price for natural gas was regulated by the Federal Government.

⁷ Exhibit 042-02-04, Current Alberta NGL Extraction Convention, August 28, 2007, Section III, Summary of 2003 Purvin & Gertz Report, page IV-3

In 1984, a second AGEC ethylene plant began operations at Joffre. This facility required the ethane supplies from two new straddle plants at Empress (the second phase of AEEP) as well as the incremental ethane recovered from expansion of the Cochrane straddle plant. Ethane supplies were also secured from the Shell Jumping Pound gas plant, which added ethane extraction capability to meet this new demand. Again, long term cost of service contracts, which expired in 2004, underwrote these new projects.

The Edmonton Ethane Extraction Plant (EEEP) processes natural gas on the ATCO Pipelines System in south Edmonton. EEEP commenced operations in 1978 and uses turbo expander extraction with a natural gas capacity of 390 MMcf/d to extract ethane and a C₃₊ NGL mix. Other straddle plants on ATCO Pipelines include the Fort Saskatchewan Ethane Extraction Plant and the Villeneuve Ethane Extraction Plant, both having turbo expander technology to extract an ethane plus natural gas liquids stream from inlet gas. The Fort Saskatchewan plant commenced operations in 1984 with an inlet natural gas capacity of 37 MMcf/d and the Villeneuve Plant started operations in 1997 with an inlet natural gas capacity of 40 MMcf/d. ATCO Pipelines also lists two additional straddle plants as located on their system, namely the Paddle River Gas Plant and Fairydell-Bon-Accord Plant.⁸

The 1985 deregulation of natural gas markets resulted in increased volumes of natural gas and natural gas liquids production and lower fuel gas and shrinkage costs. There was ample ethane supply for the ethylene plants. However, a new market for ethane and other NGL was emerging for use as a miscible solvent in enhanced oil recovery schemes. The Alberta government encouraged the growth of miscible flooding by providing favourable royalty treatment and this led to the addition of significant deep-cut extraction capability at field facilities for the recovery of ethane plus products (C₂₊).

The Alberta ethylene industry became concerned about the available supplies of ethane in Alberta as deep-cut field gas processing plants upstream of the straddle plants started to remove substantial quantities of ethane plus products prior to the gas entering the AGTL system to meet this new demand. In an effort to resolve the dispute between the Alberta ethylene industry and the gas producing industry, the Government of Alberta issued a policy statement in 1987 (Alberta Ethane Policy⁹) that outlined its position respecting the extraction of ethane in the province. The policy established certain rules intended to ensure that both industries in the province that used ethane would have access to adequate and competitive sources of supply. The basis of the policy was the setting of a guaranteed "threshold volume" of supply to satisfy the requirements of the existing ethylene industry for the period of time covered by the existing ethane supply arrangements.¹⁰

Upon commencement of the new Alberta Ethane Policy, the Government requested the ERCB to consult with interested parties regarding specific issues relating to the policy's implementation and the ERCB convened an Inquiry commencing October 26, 1987. The ERCB's report containing recommendations respecting implementation of the Alberta Ethane Policy was released in 1988. Legislation was passed to give the ERCB the responsibility to implement the policy. The policy set threshold volumes for the petrochemical plants, based on the capacity of the plants as well as a buffer volume, to be in effect for the length of term of certain industrial development permits, which meant that the full threshold volume would be provided until the

⁸ Exhibit 009-03-06, ATCO Pipelines' Information Responses to Shell, SCE-AP-4(a)

⁹ Exhibit 001-08-01, Energy Resources Conservation Board, *Alberta Ethane Policy Report on Implementation*, April 1988, Appendix 1B

¹⁰ Ibid, Executive Summary, page xi

end of 1998. The protection would then be reduced annually for an additional ten years.¹¹ The Alberta Ethane Policy expired on June 30, 2008.

In the early 1990s, Dow proceeded with plans to build a world scale ethylene plant at Fort Saskatchewan. Natural gas production volumes were soaring and the demand for C₂₊ for miscible flooding was declining. A large new gas discovery at Caroline in 1988 was rich in ethane and would become the major source of ethane supply for the new Dow plant that came on stream in late 1994. Both of the Joffre ethylene plants were expanded and the Dow plant was expanded in 1998. The growth of the ethylene industry continued in 2000 with the addition of another ethylene plant at Joffre owned by NOVA Chemicals Corporation (NOVA Chemicals) and Union Carbide (now Dow). At the same time derivative plant additions and expansions occurred including two new polyethylene plants owned by NOVA Chemicals and Dow, an ethylene glycol plant owned by Shell, a BP Canada Energy Company (BP Canada) linear alpha olefins facility, and expansions at Shell Scotford and AT Plastics Inc. Edmonton.

The high pressure Alliance pipeline system, which commenced operation in 2000, connected the Western Canadian Sedimentary Basin (WCSB) to Chicago, Illinois and was designed, in part, to provide an alternative market for ethane and other gas liquids. The Alliance pipeline transports natural gas and entrained NGL from Alberta and British Columbia to the Aux Sable gas processing plant near Chicago. Shippers on the pipeline relinquished rights to the NGL entrained in their gas stream, however rates were established on the basis of a volumetric toll so that the per gigajoule cost of shipping could be reduced by moving gas with a higher liquids content.

In 2003 the most recent straddle plant came on stream at Joffre allowing natural gas destined for certain domestic markets to be stripped of ethane and other natural gas liquids. Ethane from this straddle plant is used as feedstock by the Joffre ethylene plants.

1.2.1.3 Present

There are approximately 550 active gas processing plants in the Province of Alberta that recover NGL mix or pure products, ten processing plants that fractionate NGL mix streams and nine straddle plants.¹² Recovery rates for field plants depend on plant design and economics and generally range from 75 to 98 percent for propane, 90 to 100 percent for butanes and 98 to 100 percent for pentanes plus. A small number of field plants also have the capability to extract ethane as a discrete product or as a C₂₊ mix.

Ethane recovery factors at straddle plants vary from 40 to 90 percent and average 65 percent. Recoveries for propane, butanes and pentanes plus are 98.5 percent, 99.5 percent and 99.8 percent respectively at Alberta straddle plants.¹³ Table 2 itemizes the current straddle plants, including the location, operator, natural gas approved volumes, natural gas receipts and ethane production.¹⁴

¹¹ Ibid, Executive Summary, page xiv

¹² ERCB ST-50A Gas Processing Plants by Gas Plant Reporting Facility ID

¹³ Exhibit 049-04-01, Ziff Energy Inquiry Expert Submission, page 6-9, Table 5

¹⁴ ERCB ST-50A Gas Processing Plants (by Gas Plant Reporting Facility ID), ERCB ST-13 Alberta Gas Plant and Gathering System Statistics

Table 2: Current Straddle Plants¹⁵

Area of Straddle Plant	Location	Operator	2007 Gas Approved Volumes (10 ³ m ³ /d)	2007 Gas Receipts (10 ³ m ³ /d)	2007 Ethane Production (m ³ /d)
Empress	10-11-020-01W4	Spectra Energy Empress Management	67960	47514	3
Empress	04-12-020-01W4	BP Canada Energy Company	176750	91794	9270
Cochrane	16-16-026-04W5	Inter Pipeline Extraction Ltd.	70450	53694	7930
Ellerslie (Edmonton)	04-04-052-24W4	AltaGas Ltd.	11000	8849	2382
Empress	01-10-020-01W4	ATCO Midstream Ltd.	31000	15575	1055
Ft. Saskatchewan	01-03-055-22W4	ATCO Midstream Ltd.	1051	765	221
Empress	16-02-020-01W4	1195714 Alberta Ltd.	33809	33839	4126
Joffre (JEEP)	03-29-038-25W4	Taylor Management Company Inc.	7066	312	831
Atim (Villeneuve)	08-05-054-26W4	ATCO Midstream Ltd.	1133	1004	0

About 97 percent of the ethane extracted in Alberta in 2007 was used within the province as ethylene feedstock. Roughly 10 percent of the propane and 40 percent of the butanes recovered from gas processing in Alberta in 2007 was used within the province.¹⁶ The balance was shipped from Alberta to US and eastern Canadian markets. Propane is both a fuel and used in the petrochemical industry. Butanes are typically used in gasoline blending or other refinery processes. Propane and butanes prices generally follow crude oil prices; accordingly, the incentive to recover these products is greatly influenced by the price of crude oil.

Demand for pentanes plus in the province is high and in 2007, pentanes plus production was unable to meet demand. Its main use is as a diluent in the blending of heavy crude oil and bitumen to facilitate pipeline transportation to market.

The value of Alberta NGL production in 2007 was 9.5 billion dollars representing over 23 percent of the total value of natural gas plus natural gas liquids.

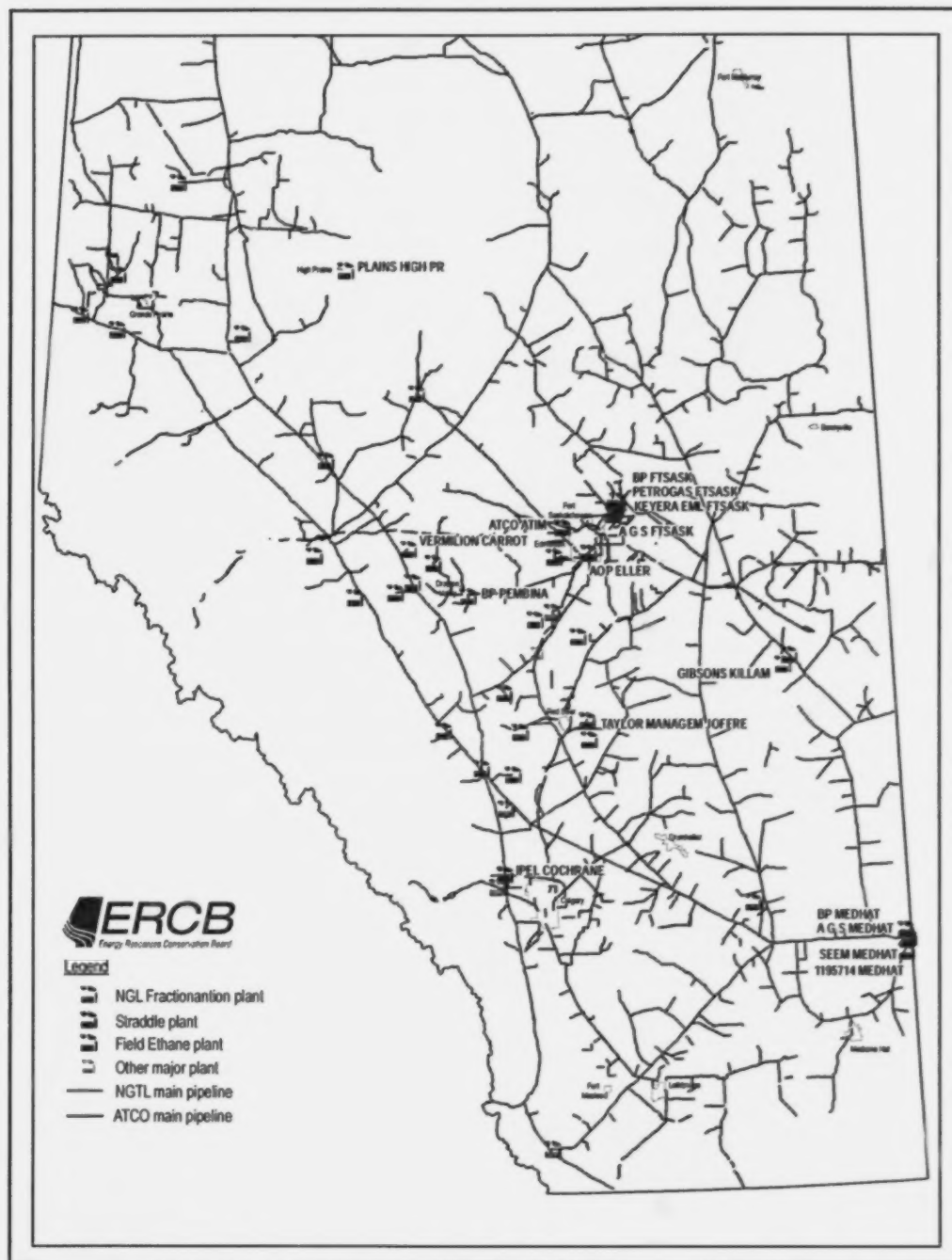
Figure 1 is a simplified map illustrating straddle plants, major field extraction plants, fractionation facilities and pipelines.¹⁷

¹⁵ Plants located on the ATCO Pipelines System include Ellerslie, Fort Saskatchewan and Atim. All others located on the NGTL system.

¹⁶ ERCB ST98-2008 Report, *Alberta's Energy Reserves 2007 and Supply/Demand Outlook 2008-2017*, June 2008

¹⁷ Alberta Energy and Utilities Board, *Alberta NGL Extraction Facilities and Natural Gas Pipelines with Straddle Plants, 2007*

Figure 1: Map of Major NGL Extraction and Processing Facilities



1.2.2 History of NGL Extraction rights

The NGL industry grew rapidly in Alberta, as described in Section 1.2.1, in the decades following the 1950s. Much of the NGL is recovered from gas flowing on rate regulated natural gas transmission pipelines at straddle plants located near Alberta border points or at other strategic locations. The regime with respect to the right to extract NGL at the straddle plants has developed differently on different pipelines.

1.2.2.1 Development of Extraction Rights on NGTL

NGTL owns and operates an extensive natural gas transmission system in Alberta, which gathers and transports natural gas for delivery and use within Alberta and for delivery to provincial border points connecting to various downstream pipelines (the NGTL System).¹⁸ The Report of the Natural Gas Liquid Extraction Convention Task Force (NECTF Report) defines extraction rights and their background for the NGTL System as follows:¹⁹

Extraction rights are defined as the right to process a specific volume of gas upstream of a delivery point to recover the entrained NGL content. Extraction rights are currently conferred upon certain parties through a contracting convention and are created at points on the NGTL System where gas can access an extraction plant. The convention is rooted in the industry's history. When the original extraction plants were built, aggregators were the only Alberta export shippers on the NGTL System; they held both the receipt and delivery transportation. Since the extraction plants were physically located near export delivery points, administering extraction based on export nominations was operationally efficient. The contracting convention continues to confer extraction rights on export shippers who do not need a direct contractual link to gas producers.

As noted above, aggregators were the original export shippers on the NGTL System. In the mid 1980s, the process of deregulating natural gas prices began, bringing about significant changes to the natural gas industry and marking the end of dominance by the aggregators. Producers began to contract for export delivery service on NGTL to supply downstream natural gas markets. Large consumers negotiated purchases with producers and also contracted for export delivery service. As deregulation continued and transportation options evolved, separation of receipt and delivery transportation service occurred in 1989 on NGTL. This separation was enhanced with the development of the NOVA Inventory Transfer (NIT) market in 1993 where sales and purchases could be made without receipt or delivery transportation contracts.²⁰

Extraction rights with respect to NGL on the NGTL System are allocated pursuant to a convention, described in Section 1.2.3.1 below to shippers who nominate to transport gas to delivery points downstream of the straddle plants. The adoption of the convention was by general consensus and was not formally incorporated into the NGTL tariff. The extraction rights are allocated to individual delivery shippers based on their pro-rata share of the total delivery nominations at the downstream delivery point. Straddle plant operators purchase extraction rights from the delivery shippers. Extraction rights allow the holder to direct gas to the straddle plants.²¹

¹⁸ Exhibit 034-03, NGTL Submission, page 1

¹⁹ Exhibit 001-08-02, *NGL Extraction: Current Convention and Alternatives* prepared by the NGL Extraction Convention Task Force, September 2005, page 21. The NECTF process and report is described in Section 1.2.4

²⁰ Exhibit 001-08-02, NECTF Report, page 40

²¹ Exhibit 034-03, NGTL Submission

1.2.2.2 Development of Extraction Rights on ATCO Pipelines and AltaGas Utilities

The right to extract NGL on the ATCO Pipelines and AltaGas Utilities systems developed in connection with the evolution of their tariff provisions. Information on the current conventions on these systems is provided in Sections 1.2.3.2 and 1.2.3.3.

1.2.3 Current NGL Extraction Conventions

NGL extraction currently occurs on the NGTL System and the intra-Alberta gas transmission system operated by ATCO Pipelines (ATCO Pipelines System). AltaGas Utilities does not currently have any NGL extraction facilities on its pipeline system, but has some provision in its tariff documents relating to NGL as discussed in a subsequent section.

1.2.3.1 NGTL Current Convention

NGL extraction on the NGTL System occurs at Cochrane, Joffre and Empress/McNeill. On the NGTL western leg, a single straddle plant at Cochrane is located approximately 150 kilometers north of the Alberta/British Columbia border point (A/BC). At the Alberta/Saskatchewan (Empress/McNeill) border point, four straddle plants are in operation. The Joffre Ethane Extraction Plant (JEEP) is located at the Joffre intra-Alberta delivery location in central Alberta.

Under the current convention (Current Convention), the right to extract NGL from natural gas transported on the NGTL System is held by shippers placing gas nominations under firm or interruptible NGTL delivery service contracts at the border export point downstream of a straddle plant. An administrative exception to the Current Convention is at JEEP where the right to extract NGL is held by shippers who hold delivery service within Alberta at a point immediately downstream of that straddle plant. This Current Convention has developed and evolved over time from arrangements between NGTL and affected parties, and does not form part of formally approved tariff documents.

The NECTF Report described that gas received onto NGTL becomes a part of the common stream (Common Stream) as follows:²²

Currently, gas entering the NGTL System becomes part of a common stream and has operated on the basis that shippers have rights to a certain quantity of energy (gigajoules) in the common stream but they do not have explicit rights to the components or to a certain volume of gas at a specific heat value. This practice of allocating a proportionate share of the common stream simplifies and enables NGTL operations, east and west flows of the gas, intra-Alberta deliveries, contracting, and extraction plant operations.

In Decision 2004-006²³ (the Solex Decision) the Board found that:

...once a producer/shipper enters into a transportation contract with NGTL, it gives up any and all rights to NGL in that specific gas in exchange for an appropriate share of the Common Stream.

Under the Current Convention, the extraction rights holders are allocated a portion of the Common Stream volume available at the inlet of the straddle plants in the same proportion as their downstream delivery point nomination relates to all nominations for all delivery shippers nominating gas at the same downstream delivery point. In other words, the Current Convention

²² Exhibit 001-08-02, *NGL Extraction: Current Convention and Alternatives* prepared by the NGL Extraction Convention Task Force, September 2005, page 22

²³ Exhibit 001-08-04, Decision 2004-006: Solex Gas Processing Corp., Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines, January 27, 2004, page 8

determines the extraction rights for a shipper based on its delivery nomination at the export delivery point downstream of a straddle plant as a percentage of the Common Stream volume available at the inlet of a straddle plant upstream of that delivery point.

At Empress/McNeill, this volume of gas is determined based upon the downstream border demand nominated, an estimate of straddle plant shrinkage and adjustments for any estimated receipt volumes downstream of the straddle plants. At Cochrane and Joffre, the straddle plants process all of the available gas based upon their operational needs and determine the extraction rights holders at the end of each day based on the respective A/BC border or intra-Alberta delivery nomination provided by NGTL.

Gas flows destined for delivery points downstream of the straddle plants are available to straddle plants for processing based on instructions to NGTL from export delivery shippers. Export delivery shippers also have the option to bypass straddle plants entirely. Export delivery shippers directly contract with the straddle plants for the removal of NGL. NGTL does not participate in these contractual arrangements, but provides a service to facilitate the processing of Common Stream gas at the straddle plants.

Under the Current Convention, only export delivery shippers are able to contract with straddle plant operators. Consequently, only those receipt shippers/producers holding export delivery capacity may obtain value for the in-stream NGL components in the Common Stream. If they do not hold export delivery capacity, producers and receipt shippers relinquish their rights to the in-stream components by selling their gas within Alberta, once their gas is on the NGTL pipeline.

NGTL facilitates the administration of extraction rights under the Current Convention by managing two separate processes. One process applies to the Empress straddle plants and the other to the Cochrane and Joffre straddle plants. In both processes the extraction rights are attributed by the Current Convention to shippers who have nominated gas at a delivery point downstream of those straddle plants.

The separate allocation of extraction rights in the manner described creates three pools of extraction rights, one at the inlet to each of the straddle plant locations: Empress, Cochrane and Joffre. An extraction rights holder within a pool can choose to:

- transfer its extraction rights to another party within the pool;
- direct its extraction rights to a straddle plant associated with the pool; or
- direct its extraction rights to by-pass the straddle plant(s).

All shippers at the downstream delivery point are attributed a percentage of the Common Stream. Given that extraction rights are a function of delivery nominations, the NGL content of receipts onto the NGTL System are not factored into the entitlement determination. The Current Convention does not recognize the leanness or richness of an individual receipt shipper's components and only deals with Common Stream composition.

At Empress/McNeill the disposition of extraction rights within the extraction rights pool is facilitated by NGTL. Through an automated process the extraction rights holders instruct NGTL as to which of the choices described above they have elected to implement. An instruction to transfer all or a portion of their extraction rights to another party is called a "pooling instruction". An instruction to direct their extraction rights to a specific straddle plant is called a "banding instruction". In the case where several plants will be used, shippers must also tell NGTL the

quantity of their gas assigned to each plant.²⁴ Volumes of gas, rather than energy content, govern these transactions. If the extraction rights holder does not provide either a pooling or banding instruction, its extraction rights volume will by-pass the straddle plants. NGTL does not measure the gas in or out of straddle plants, but relies on the straddle plant measurements.

NGTL informs the straddle plants of the quantity of gas they have been authorized to process based on the gas that is nominated and confirmed at the downstream delivery points. The process begins with NGTL confirming a shipper's nomination requests at the downstream delivery points. The banding and pooling instructions are then applied to these confirmed nominations and the results are forwarded to each of the straddle plants. Each of the Empress/McNeill plants is expected to manage its inlet take to only process its percentage share of available physical gas. If a plant exceeds its proportionate share on any given day, the excess volume will be subtracted from its next day estimated available inlet volume and added to the available inlet volume of the plants that received less than their proportionate share. At the end of the gas day, the final banding and pooling results from all the nomination cycles are provided by NGTL to the straddle plants.

Daily imbalances may occur between the total estimated available inlet volume for the Empress/McNeill plants, as determined by NGTL, and the actual inlet volume of gas available due to operational variances, and are shared proportionately among the straddle plants.

Straddle plants measure the energy content shrinkage associated with the removal of energy in connection with the extraction of NGL from the Common Stream. The straddle plants provide final shrinkage allocations to NGTL based on these results. Shippers' transportation accounts are updated based on these shrinkage allocations and must be balanced with supply onto the pipeline. Shrinkage must be accounted for through deliveries of additional gas onto the system by the export shipper or a person nominated by the export shipper, including the straddle plant owner. NGTL's Extraction Service (FT-X)²⁵ provides for:

- operational delivery of the Common Stream to a straddle plant and back onto the NGTL System from the straddle plant, and
- contractual delivery of the shrinkage volume to the straddle plant.

The practice of custody transfers off the pipeline into and out of straddle plants predates the existence of NGTL's actual FT-X service. The practice has evolved over time and is not specifically outlined in NGTL's tariff.

1.2.3.2 ATCO Pipelines Current Convention

The title or interest in gas received by ATCO Pipelines is addressed in Section 2.5 of its Transportation Service Regulations, a portion of which is as follows:

ATCO Pipelines may in the course of receiving and delivering Gas in the Gas Pipeline System commingle such Gas with or exchange for Gas owned by or transported for others, or remove certain hydrocarbon components present in the Gas. As commingling, exchanging, or the removal of certain hydrocarbon components may alter the Gross Heating Value or constituent parts of the Gas received by ATCO Pipelines at the Point of

²⁴ If a shipper is assigning extraction rights volumes to multiple parties it will provide the priority order in which to process the extraction rights volumes in the event it does not have extraction rights volumes to cover the full amount.

²⁵ Transcript Volume 14, pages 1869-1975, NGTL FT-X Rate Schedule and Operational Procedure

Receipt, ATCO Pipelines shall not be required to deliver Gas with the same Gross Heating Value or containing the same constituent parts as Gas received and ATCO Pipelines shall make whatever compensating adjustments to volume and Gross Heating Value as may be warranted. In the event, and to the extent, that any hydrocarbon components in the Gas received at the Point of Receipt are absent from the Gas delivered as the result of commingling, exchanging or removal of such hydrocarbon components in the course of transporting the Gas, title to such hydrocarbon components shall, notwithstanding anything to the contrary otherwise contained in the Agreement, be deemed conclusively to have passed to ATCO Pipelines.

Consequently, under the tariff ATCO Pipelines has the right to remove NGL present in the gas, and in such event, title to the NGL passes to ATCO Pipelines.

ATCO Pipelines allows third parties to construct and operate NGL extraction facilities on its pipeline system and transfers the right to the extracted NGL to the straddle plant customer. ATCO Pipelines currently provides Straddle Plant Delivery (SPD) service to three straddle plants on its North system²⁶ and none on its South system. In addition, ATCO Pipelines owns the Fairydell-Bon-Accord plant and the Paddle River Plant, which do not have SPD service.

The straddle plants enter into an SPD transportation service agreement with ATCO Pipelines. The straddle plant customer compensates ATCO Pipelines for the ability to extract NGL by payment of the SPD toll. The straddle plant customer is billed the SPD rate on the total energy removed by the straddle plant, which must also provide "make-up gas" equal to the energy contained in the NGL removed.²⁷

1.2.3.3 AltaGas Utilities Current Convention

AltaGas Utilities has no natural gas processing plants or straddle plants on its transmission lines. However, the AltaGas Utilities transportation tariffs are analogous to those of ATCO Pipelines as follows:²⁸

(3) In the event, and to the extent, that any hydrocarbon components in the Gas delivered at the Point of Receipt are absent from the Gas delivered at the Point of Delivery as the result of commingling, exchanging or removal of such hydrocarbon components in the course of transporting the Gas, title to such hydrocarbon components shall, notwithstanding anything to the contrary otherwise contained in the Transportation Contract, be deemed conclusively to have passed to AUI at the Point of Receipt.

1.2.4 Need to Review Extraction Convention on NGTL

The appropriateness of the Current Convention was not generally debated until approximately 1995. In that year Gulf Canada Resources Limited (Gulf) applied to the EUB to reprocess a side-stream²⁹ volume of gas from the NGTL System in its Strachan gas plant. In the resulting hearing, questions regarding ownership of extraction rights began to be discussed. In Decision D 96-07³⁰ (Gulf Strachan Decision), the Board approved the application and confirmed that the right of resource ownership should remain with the producer of the resource until the producer relinquishes ownership through a commercial contract:

²⁶ Edmonton Ethane Extraction Plant, Fort Saskatchewan Ethane Extraction Plant and Villeneuve Ethane Extraction Plant

²⁷ Exhibit 009-02, ATCO Pipelines' Submission, page 2

²⁸ Exhibit 049-05-01, Ziff Energy Inquiry Expert Submission Part 2, pages 9-47 and 9-49

²⁹ The terms side-streaming and co-streaming are explained in Section 1.2.5

³⁰ Exhibit 001-08-03, Decision D 96-07 Gulf Canada Resources Limited - Strachan Gas Plant Approval Amendment NGTL Gas Side-streaming Application (September 26, 1996)

The Board maintains that, subject to any matters of compelling public interest, the right of resource ownership should remain with the producer of that resource until the producer relinquishes that ownership through a commercial contract.³¹

In November 2002, Solex Gas Processing Corp. (Solex) applied to the EUB to amend the licence for its Harmattan gas plant to reprocess gas upstream of an existing straddle plant, the Cochrane facility.

In the Solex Decision, the Board reaffirmed its view that while joint ownership exists among shippers in the NGTL Common Stream, an individual producer should be able to reprocess its share of the Common Stream. The Board stated in the Solex Decision that it was:

...concerned about the inequities, as presented at this hearing, in the current convention and expects this matter to be resolved through an industry process and the Board be advised by October 31, 2004.³²

The Board, in denying the Solex application, stated that it believed that the application, if approved, could result in a need to change the extraction convention to one based on receipt point volumes, potentially affecting the viability of the straddle plants, proprietary rights of producers, and impacting the natural gas markets. In that regard the Board stated:³³

As mentioned previously, the Board believes that the approval of the Solex application would likely necessitate a change in the current convention respecting the contracting for NGL extraction and may, in fact, require the establishment of an NGTL-wide tracking system for NGL. Approval of the Solex proposal may also impact the working of the NIT mechanism and hence the natural gas marketing industry. Given that not all of the industry players that may be affected by these changes were present at the hearing and not all affected parties were contacted by Solex prior to the hearing, the Board believes that it would be inappropriate to approve these applications in the absence of direct input from all of the affected parties.

The Board indicated in the Solex Decision that an examination of a change to the convention was needed to ensure it met the needs of the industry and the broader public interest. The inequities about producers' rights discussed in that hearing resulted in the Board issuing instruction in its decision to industry to resolve the issue and report to the board by October 31, 2004. In its decision the Board stated:³⁴

The Board appreciates that a number of parties at this hearing expressed a willingness to engage in a future process to consider whether changes are warranted in the current convention for extraction of NGL off the NGTL System and what they might be. The Board is concerned about the inequities, as presented at this hearing, in the current convention and expects this matter to be resolved through an industry process and the Board be advised by October 31, 2004. This industry process should be inclusive of affected parties, providing all constituents with a reasonable opportunity to advance their positions and concerns. The Board recognizes that there are a number of possible venues available to industry to initiate this review, but the Board believes that the preferred option is the collaborative process afforded to all NGTL shippers through the TTP committee. The Board requests that parties work with NGTL to initiate this review by

³¹ Gulf Strachan Decision, page 2

³² Exhibit 001-08-04, Solex Decision, page 24

³³ Exhibit 001-08-04, Solex Decision, Section 10, pages 23-24

³⁴ Exhibit 001-08-04, Solex Decision, Section 10, page 24

April 1, 2004. If this issue has not been addressed through the TTP or otherwise, the Board may direct NGTL to consider this matter in its next tariff application.

As discussed in the NECTF Report, an initial response to the Board direction was made by TransCanada's Customer Advisory Council (CAC). The CAC is a group of senior executives from large producers who met to discuss strategic industry issues. The CAC described five perceived inequities identified through a review of the Solex Decision and recommended to TransCanada's Tolls, Tariff, Facilities and Procedures Committee (TTFP) that the inequities required an in-depth review. The CAC's perceived inequities were (Perceived Inequities):³⁵

1. Receipt shippers who place dry gas with no NGL content on the system and who also hold export delivery service, get a share of the common stream and access to NGL entrained in that stream.
2. Double Dipping:
 - Producer-shippers who extract in the field get a share of the NGL in the common stream if they are also export shippers.
 - Producer-shippers with production that enters the NGTL System downstream of the extraction plants can obtain value for NGL in the common stream, even though their gas cannot be processed physically, if they hold export delivery service.
3. Producers who do not hold export delivery service cannot get direct access to the NGL which they put into the gas stream once the NGL are on the NGTL System.
4. The EUB decision confirms producer rights to NGL; however the current convention prevents the exercising of those rights if the producer doesn't also hold export delivery service.
5. Producers are responsible for NGL royalty payments without access to the benefits of the NGL value.

In June 2004, TransCanada's TTFP responded further to the direction in the Solex Decision by forming the Natural Gas Liquid Extraction Convention Task Force (NECTF or Task Force) with the mandate of providing an objective and balanced report that reviewed the Current Convention and proposed alternatives. The NECTF met weekly from June 2004 to September 2005. The membership of NECTF included membership from gas transmission companies, producers, including the Canadian Association of Petroleum Producers (CAPP), straddle plant operators, Industrial Gas Consumers Association of Alberta (IGCAA), the petrochemical industry, delivery shippers, midstream gas processors and the Alberta Department of Energy (ADOE). The participating individuals had diverse backgrounds and experience.

The Task Force produced a report entitled *NGL Extraction: Current Convention and Alternatives* dated, September 2005.³⁶ The report developed descriptions of five alternatives to the current convention and reviewed the associated benefits and concerns for each alternative (see Section 1.2.4.1). However, the NECTF Report did not make recommendations, apply a value or undertake a cost benefit review of the alternatives identified.

NGTL's August 28, 2007 submission³⁷ summarized the five Perceived Inequities identified in the NECTF Report into two points:

³⁵ Exhibit 001-08-02, Report of the Natural Gas Liquid Extraction Convention Task Force entitled *NGL Extraction: Current Convention and Alternatives* prepared by the NGL Extraction Convention Task Force, September 2005, pages 6 and 7

³⁶ Exhibit 001-08-02, NECTF Report

³⁷ Exhibit 034-03, NGTL Submission, page 10 line 23 to page 11 line 10

1. It [Current Convention] does not attribute the value of NGL components contained in the Common Stream to their source. This disconnects a producer's or receipt shipper's NGLs from the value of the Extraction Rights and results in the rich gas/lean gas cross subsidization identified in the NECTF report.
2. It [Current Convention] prevents a producer from pursuing the value of its share of NGLs in the Common Stream unless the producer holds delivery service downstream of a Straddle Plant. If a producer holds delivery service, the value of the Extraction Rights it can claim reflect the composition of the Common Stream, not the producer's gas composition, again resulting in cross subsidization.

In a letter dated July 24, 2006, the Board reluctantly accepted the NECTF Report as satisfaction of the direction provided in the Solex Decision.³⁸ In the letter the Board stated that it considered:

...many of the key issues surrounding extraction raised in Decision 2004-006 remain unresolved and the fact that the report did little to advance the Board's understanding of the technical and financial impacts of the possible alternatives that were raised.

It concluded the letter by stating:

The panel has instructed the Board staff to prepare a recommendation to the full Board for a further process to address this issue directly rather than waiting for a site specific application.

1.2.4.1 NECTF Alternatives to the Current Convention

The NECTF Report considered and provided a description of five conceptual models as alternatives to the Current Convention.³⁹ The five alternatives were summarized in the NECTF Report as follows.

Equalization

The Equalization alternative would mirror the existing equalization process used for crude oil and condensate in Alberta and would not alter the current commercial processes between extraction plants and holders of the extraction rights at the delivery point. The alternative would expect to reduce the inequality between producers of rich versus lean gas and have minimal impact on current industry practices.

Single Value Bucket

The Single Value Bucket would have extraction plants aggregate all of the extraction premiums into a 'bucket'. Producers would receive a share of the overall bucket based on the heat value each producer placed on the pipeline. The goal of this alternative is to minimize the need for major administration while providing a share of the extraction value to producers.

Receipt Contracting

The Receipt Contracting alternative would move value from the export shipper to the receipt shipper which could align more closely with the provincial royalty payee. Receipt shippers would receive a pro rated share of the common stream and would be able to contract for extraction. Although the alternative does not address the lean/rich gas inequality, it lays the foundation for a future solution to the problem.

³⁸ Exhibit 001-08-06, Board Letter to Interested Parties in Response to NGL NECTF Report (July 24, 2006)

³⁹ Exhibit 001-08-02, NECTF Report, pages 4 and 5

Producer Directed

The Producer Directed alternative sought a way to maintain the flexibility of the current system and the efficiency of the NIT market through a method that would allow producers to contract for NGL extraction. Ownership of the liquids entrained in the NGTL common stream and the associated extraction rights would be represented by extraction rights credits (ERCs). ERCs could be traded independently from the gas market and owned by producers until such ownership is transferred.

Regulated Business

The Regulated Business alternative is intended to provide a balance between maintaining the viability of the extraction plant system and the rights of owners to capture the in-stream components of their natural gas in kind. The extraction plants on the NGTL System would be actively regulated under the Gas Utilities Act on a cost-of-service basis, and in-stream components would be taken in kind. All extraction plants would be aggregated into a single composite plant including costs and yields. All owners of the gas would be required to process their component-tracked gas stream through the extraction plant and responsible for their share of the cost of service.

1.2.5 Co-Streaming and Side-Streaming

For the purpose of the Inquiry, the Board defined co-streaming and side-streaming in its July 6, 2007 notice on the final scope of the Inquiry into NGL Extraction Matters as follows:⁴⁰

Co-streaming: Refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGL and then re-inject the processed gas into the commingled stream downstream of existing straddle plant facilities thereby reducing the volume of gas that would otherwise have been available for processing at those straddle plant facilities.

Side-streaming: Refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGL and then re-inject the processed gas into the commingled stream upstream of existing straddle plant facilities thereby reducing the NGL content of the gas (richness of the gas) that would otherwise have been available for processing at the downstream straddle plant facilities.

The term side-streaming was coined during the Gulf Strachan application and subsequent hearing referred to in Section 1.2.4 above. In that application, Gulf proposed to re-process a side-stream of gas from the NGTL system. That gas was limited to equivalent volumes and NGL content owned or controlled by Strachan plant owners upstream of the plant and was to be re-processed through existing deep cut facilities at the Strachan plant. The residue gas, including all ethane, would be re-injected into the NGTL System and recovered propane plus and pentane plus transported via the Co-Ed pipeline system along with liquids recovered from raw gas at the plant.

The hearing that considered the Strachan application examined many of the same issues germane to this Inquiry. These included the issue of side-streaming, ownership of the Common Stream, economic and orderly development, and the public interest. In the Gulf Strachan Decision, the Board accepted that the applicant (Gulf and by extension, other owners of the plant) had the right to side-stream its share of the Common Stream at the Strachan plant stating:⁴¹

⁴⁰ Exhibit 001-08 (see also Appendix 4)

⁴¹ Exhibit 001-08-03, Decision D 96-07 Gulf Canada Resources Limited - Strachan Gas Plant Approval Amendment NGTL Gas Side-streaming Application (September 26, 1996), Section 4.4 page 7 & Section 10, page 17

The Board has maintained that, subject only to public interest issues, the discretion to use and direct the disposition of resources should be left to market forces or as per conditions agreed to by contract. The Board accepts the position of Gulf that it is legally entitled, under its contract with NGTL, to sidestream its share of the NGTL common stream.

The Board indicated that a viable straddle plant industry was in the public interest and had served the province well as had the field processing plants. The Board also recognized the side-streaming would be a secondary, less desirable option to a field plant compared with raw gas processing. To that extent it indicated that Gulf should continue to favour raw gas processing to NGTL Common Stream re-processing, as a condition to approving the application.

The Board recognized that while some incremental liquid recovery could be realized by this application, the absence of significant and unequivocal net social benefit should not be an important factor for denying such an application. The Board indicated that if future similar applications were restricted to existing facilities and if side stream volumes were restricted to proprietary gas of the plant owners, future applications would be limited. It further indicated that it saw a lack of merit in new green field facilities and that the Board would be concerned if significant third party gas were side-streamed at the expense of the straddle plants.

The Board approved the Gulf Strachan application, subject to four conditions. The volume of gas from NGTL was restricted to what Gulf had requested in its application as gas volumes owned or controlled by the Strachan gas plant owners. Additionally, Gulf was required to satisfy the Board that it was making a reasonable effort in optimizing the plant for raw gas processing. Further, Gulf was required to develop and conform to a component based monitoring system that would ensure that Strachan plant owners did not recover more NGL than they were entitled to based on the gas they had put onto the system. Finally, Gulf was required to ensure that it received no commercial benefit for the same volume of gas reprocessed at the Strachan plant, subsequently being processed by a straddle plant.

As noted in Section 1.2.4, in November 2002, Solex made application to the EUB to amend its Harmattan gas plant to side-stream a volume of gas from NGTL. The Harmattan plant had existing deep cut extraction equipment capable of 80 percent ethane recovery, 98 percent propane recovery and recovery of virtually all other NGL. Solex indicated that although raw gas processing was the best economic use of the plant, the under utilized capacity could be used to reprocess a stream of gas from NGTL.

Solex believed its plant would provide a competitive alternative to the only current option on the western leg of NGTL, the Cochrane straddle plant. Additionally, it would reduce the unit operating cost at Harmattan, encouraging consolidation of other plants in the area and extending the operating life of the plant. It would also result in enhancement to the provincial ethane supply to the petrochemical industry.

Solex stated that the convention giving delivery shippers the right to extraction rights was not developed as a result of government legislation or direction but due to business arrangements. It indicated that producers who did not hold delivery service did not get the benefit of the NGL in the gas they put onto the system. Producers participating in that proceeding agreed with that assertion.

In the Solex Decision, the Board noted that the Solex application differed from the Gulf Strachan application in some key ways. Firstly, Solex applied to reprocessing much larger volumes than were contemplated in the Gulf Strachan application and the Solex application included significant third party gas. Unlike the Gulf Strachan application, the Solex application would

extract ethane from the gas stream. Although Solex was a midstream company and not a producer, the Board did not believe it was necessary that the producer own the plant in order to be entitled to reprocess its share of the Common Stream. The Board recognized that since the Gulf Strachan Decision, increased unused capacity at field plants had developed, potentially increasing the likelihood of side-streaming applications. It also noted that a new NGL royalty structure had been put in place which would act as an incentive for producers to realize the value of the NGL they put into the Common Stream.

The Board, in denying the Solex application, stated that it believed that the application, if approved, could result in a need to change the extraction convention to one based on receipt point volumes, potentially affecting the viability of the straddle plants, proprietary rights of producers, and impacting the natural gas markets.

In 2006, Taylor Processing Inc. (Taylor) submitted an application to amend the Harmattan plant licence and to construct new pipelines for the plant to become a co-stream facility. That application was under review at the time the NGL inquiry was initiated and then suspended by the Board pending the results of the Inquiry. The application was closed when a subsequent unrelated application to amend the sulphur recovery conditions of the Harmattan plant licence was approved, rendering information contained in the co-streaming application obsolete. In such circumstances, applicants are required to close the application and re-apply with corrected information.

1.2.6 Lean Gas Streaming

Lean gas streaming is the concept of directing gas that has low NGL content to markets where it can be directly consumed, rather than flowing that gas to NGL extraction facilities where it would increase the volume of gas, but dilute the NGL content of the gas that would be processed to recover NGL. Since the gas would be streamed directly to consumption points, some of which might otherwise be consuming NGL rich gas, lean gas streaming has the potential of reducing NGL used as fuel and increasing overall NGL recovery in Alberta.

One potential opportunity for lean gas streaming arises with respect to the recently increasing volumes of coal bed methane (CBM) which are being developed within Alberta. CBM is very lean as it is composed almost entirely of methane.

1.3 Reasons for Inquiry

In its June 4, 2007 Notice,⁴² the Board stated at page 1 that:

- (a) the Alberta Ethane Policy⁴³ will expire on June 30, 2008;
- (b) there has been significant evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and the related gas, transportation and natural gas liquids (NGL) markets since the implementation of the Alberta Ethane Policy in July 1990;
- (c) in Decision 2004-006⁴⁴ the Board requested parties to work with NOVA Gas Transmission Ltd. (NGTL) to review the current conventions and practices for extraction for NGLs off the NGTL System which resulted in the *NGL Extraction Convention Task Force Report* dated September 2005 (the Task Force Report); and

⁴² Exhibit 001-01, Notice of Inquiry dated June 4, 2007 (attached as Appendix 3)

⁴³ As reflected in IL 90-09 dated July 16, 1990, Section 35 of the *Oil and Gas Conservation Act* RSA 2000, c. 0-6 and Part 9.1 of the *Oil and Gas Conservation Regulations* AR 151/71

⁴⁴ Decision 2004-006 – Solex Gas Processing Corp. Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines, dated January 27, 2004.

- (d) the Board in a letter dated July 24, 2006 reluctantly accepted the Task Force Report despite concerns that many of the key issues and perceived inequities relating to extraction remained unresolved and indicated that it would consider further processes to address these issues.

The Board's public inquiry process was viewed as the most appropriate mechanism to foster an open and inclusive process for interested parties to present and cross-examine evidence and for the Board to fully understand related issues and address them in its Inquiry Decision.

The Board, in defining the purpose of the Inquiry, considered the following factors to be relevant.

- A review of the implications of Alberta supply and demand issues related to NGL extraction was needed. Considerations needed to include declining Alberta gas production, increasing intra-Alberta use and lean gas production (reduced NGL content), as well as future ex-Alberta gas supplies (in particular Alaska and MacKenzie Valley gas) that may flow on EUB regulated transmission pipelines.
- A mechanism was needed to assess the Perceived Inequities, determine the need for resolution and identify appropriate measures. While the NETCF process provided important information on the history of NGL extraction in Alberta and identified inequities in the current system, it was not able to put forward a solution that had consensus support. As part of this an assessment was necessary of whether the changes to gas transportation contracts (differentiation of receipt and delivery shippers) and gas markets through the emergence of the Alberta Hub (NOVA Inventory Transfer or NIT market) should result in changes to the Current Convention.
- An assessment was needed of the impact of lean gas supplies (including CBM) on the current Alberta gas transportation system design and if streaming of lean gas would be appropriate.
- A more comprehensive review of side-streaming and co-streaming outside the context of specific facility application processes was needed. Starting with the Gulf Strachan hearing in 1996 and continuing with the Solex Harmattan hearing in 2004 the Board has addressed issues related to reprocessing gas taken off the NGTL System at existing field gas plants. More recently the Board has received applications for a similar project where the gas would be returned to the NGTL System downstream of the straddle plants (co-streaming). Objections to the projects included significant issues with respect to conventions and overall NGL extraction system implications.

Based on the foregoing, the Board believed that there was a need for a comprehensive review of existing rules, contractual arrangements and practices with respect to extraction of NGL within Alberta. In particular, the Board determined that reexamination was needed of existing rules, contractual arrangements and conventions related to NGL extraction from the common natural gas stream transported through Alberta regulated gas pipeline transmission systems and processed at Alberta regulated facilities.

1.4 Inquiry Scope

The Board maintained a broad scope for the Inquiry so that the full range of complex and interrelated issues relating to resource development and NGL extraction could be examined and

understood. In its letter of July 6, 2007, the Board grouped the preliminary list of issues to focus on three Inquiry Principal Issues as follows.⁴⁵

1. Do the existing NGL Extraction Conventions need to be changed in order to address perceived inequities in the existing conventions, thereby promoting the economic, orderly and efficient development of Alberta's natural resources? If they need to be changed, how should they be changed to deal with these inequities?

In addressing this issue the Board must consider:

- a. What are the NGL Extraction Conventions and how are they documented or otherwise established?
 - b. Who has the legal entitlement to NGL extraction rights from the common stream?
 - c. Are the NGL Extraction Conventions consistent with the legal entitlement to NGL extraction rights?
 - d. What inequities result from application of the NGL Extraction Conventions?
 - e. What options (and the pros and cons of each), including without limitation those considered in the NGL Extraction Convention Task Force (NECTF) Report, are available to address these inequities?
 - f. What are the potential impacts to all stakeholders of suggested changes to the NGL Extraction Conventions?
2. In addressing the perceived inequities with the NGL Extraction Conventions, does the Board need to consider if further modifications to these conventions and/or the development of other rules and guidelines are required in the interest of:
 - promoting the economic, orderly and efficient development of Alberta's natural resources; and/or
 - sustaining and developing the natural gas industry, Alberta's pipeline, extraction and petrochemical industries?

If modifications to the NGL Extraction Conventions or new rules and guidelines are required, what should they be?

In addressing this issue the Board must consider:

- a. What are the relevant forecasts to consider?
- b. How can the development of Alberta's gas resources, both NGL rich gas and lean gas, be encouraged without creating inequities with respect to NGL extraction rights, impacting efficiencies and the sustainability of the extraction and petrochemical industries or causing undue impact to ratepayers?
- c. How can the extraction and upgrading of NGLs within the Province of Alberta be encouraged to the maximum extent practical while providing the owners of NGL extraction rights with fair compensation?
- d. Should side-streaming, co-streaming, or the ability to by-pass extraction be restricted?
- e. If the answer to (2d) is "yes", what restrictions are appropriate and what are the rules and criterion to be applied in assessing when a restriction is to be applied and in determining what the nature of the restriction will be?

⁴⁵ Exhibit 001-08, Board Process letter, Final Issues List, Scoping Document, & Revised Schedule - July 6, 2007 (attached as Appendix 4), page 3

- f. Do NGL extraction conventions as they apply to all EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines need to be consistent in order to avoid unfair competitive advantages or unfairness to shippers, pipeline/facility owners or buyers of natural gas or NGLs?
 - g. Are modifications desirable in order to encourage the use of Alberta pipeline and extraction facilities by gas sourced from outside of Alberta?
 - h. What are the potential impacts to all stakeholders of suggested modifications to the NGL Extraction Conventions and from any new rules or guidelines?
3. In the event that any changes to the existing NGL Extraction Conventions result from the Inquiry or in the event that the Board provides for the development of new rules or guidelines relating to NGL extraction matters, how should these changes be implemented?

In addressing this question the Board must consider:

- a. What action is required and by whom in order to implement changes to the NGL Extraction Conventions and/or new rules or guidelines and over what period of time?
- b. Who should bear any associated costs?
- c. Do any existing arrangements need to be grandfathered?
- d. Do these new conventions, rules and guidelines require periodic reconsideration?

As noted in its July 6, 2007 letter on the final scope of the Inquiry into NGL Extraction Matters, the Board did not intend to review the new Incremental Ethane Extraction Program policy announced by Alberta Energy on September 29, 2006, nor did it intend to undertake a review of the terms and conditions of the expired Ethane Policy.

1.4.1 Form of Board Findings

The Board's July 6, 2007 letter set out the following anticipated outcomes for the Inquiry:⁴⁶

- A description of current or proposed NGL extraction conventions on EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines (NGL Extraction Conventions), current issues and trends in gas supply, composition and NGL recovery;
- Findings as to entitlement to NGL extraction rights with respect to the common stream of EUB regulated pipelines;
- Direction to parties to implement changes to NGL Extraction Conventions including tariff amendments;
- Guidelines or other criteria to assist industry with respect to the economic, orderly and efficient development of Alberta's natural resources as it may relate to NGL extraction rights and facilities development including matters related to side-streaming and co-streaming;
- The identification of new conditions for new facility licenses, permits or approvals; and
- Potential recommendations to the Government of Alberta on policy matters beyond the mandate of the Board.

The Board amended the foregoing anticipated outcomes in its August 15, 2008 Ruling Regarding Motion and Notice of Question of Constitutional Law. The Board stated:⁴⁷

⁴⁶ Exhibit 001-08, Board Process letter, Final Issues List, Scoping Document, & Revised Schedule - July 6, 2007 (attached as Appendix 4), pages 1 and 2

⁴⁷ Exhibit 001-42, Board Letter - Ruling on Constitutional Question Motion (attached as Appendix 7), page 9

...the Board has determined that it will make recommendations only with respect to the matters dealt with in the Inquiry, rather than issue specific decisions or directions in relation to any such matters.

This determination was made in response to submissions by certain parties with respect to the original range of possible outcomes and objectives for the Inquiry as stated above.

The Board noted the following reasons for its decision to make only recommendations in its Inquiry Decision:

Although the division of the Board into two tribunals, the Energy Resources Conservation Board (ERCB) and the Alberta Utilities Commission (AUC), had been proposed at the time that the Inquiry commenced, the ultimate passage of legislation, the form that legislation might take and the timing of enactment were uncertain. The creation of the ERCB and the AUC as of January 1, 2008 clearly demonstrates the intention of the legislature to phase out any ongoing role for the Board. Accordingly, further proceedings or processes, including compliance filings that could result from directions of this Board would fall to these successor tribunals to consider. Although the Board remains able to issue decisions and directions as originally contemplated, from a practical perspective, the Board considers such measures in the circumstances to be inadvisable. Making recommendations to the applicable authority appears to be the most appropriate method of proceeding.⁴⁸

1.4.2 Inquiry Expert

Due to the scope and complexity of issues before the Inquiry, the Board engaged Ziff Energy (the Inquiry Expert) to provide independent expertise to the Board and parties on matters before the Inquiry from a recognized private industry consultant. In its July 6, 2007 letter, the Board defined the following responsibilities of the Inquiry Expert.

1. The Inquiry Expert will consider the submissions from Parties to determine which areas require clarification and to identify any informational gaps in the evidence before the Board. The Inquiry Expert will submit information requests to try and achieve clarification and to fill in information gaps. Where it is unable to obtain missing information from parties it will attempt to provide the necessary information in a report (Report) to be filed with the Inquiry. Missing information to be supplied by the Inquiry Expert will primarily be with respect to providing data and forecasting information as well as completing background information from Alberta and other relevant jurisdictions.
2. The Inquiry Expert will conduct an analysis of the evidence of each Party and where the evidence is in significant conflict, the Inquiry Expert will comment in the Report on the points of conflict and highlight the strengths and weaknesses of the positions of the respective Parties.
3. The Inquiry Expert may also identify and assess in the Report one or more possible alternative approaches (or modifications to proposals put forward by Parties) to the matters before the Inquiry. The Inquiry Expert will advance an alternative approach(s) if it is of the opinion that such an alternative approach(s) would likely align with the overall Alberta public interest to a greater extent than any of the approaches suggested by the Parties. The Report will also assess the benefits, limitations and market impacts of any suggested alternative approach(s).⁴⁹

Dealings between the Board and the Inquiry Expert were limited to administrative and financial matters. Neither the Board nor Board staff assigned to the Inquiry had contact with the Inquiry Expert or reviewed any drafts of the Report or information request responses prior to release to

⁴⁸ Exhibit 001-42, Board Letter - Ruling on Constitutional Question Motion, page 9

⁴⁹ Exhibit 001-08, Board Process letter, Final Issues List, Scoping Document, & Revised Schedule - July 6, 2007, page 5

all Inquiry participants. The Inquiry Expert answered information requests from parties and the Board and was available for cross-examination by all parties and the Board. The Board addressed extensive information requests and cross-examination to the Inquiry Expert.

The Inquiry Expert did not cross-examine other parties and did not provide final argument in the proceedings.

In its deliberations, the Board considered the Report, information request responses and testimony of the Inquiry Expert as additional evidence bearing in mind the independent nature of that evidence.

1.5 Inquiry Procedural Matters - Motions and Rulings

Throughout the Inquiry proceeding the Board provided rulings and directions on several motions or other issues raised by interested parties, including the following:

- a) Shell Motion to Compel Better Information Responses,
- b) Shell Request for Scope Clarification,
- c) Western Export Group and Tenaska Marketing Ventures and Tenaska Marketing Canada (WEG/Tenaska) Request for Clarification,
- d) Straddle Plant Group (SPG) Preliminary Matter Regarding Un-sponsored Evidence,
- e) Late Requests to Participate,
- f) Motions with Respect to the Consideration of New Matters by the Inquiry Expert,
- g) Ruling Regarding Impact of Application by TCPL to the National Energy Board (NEB), and
- h) Ruling Regarding Motion and Notice of Question of Constitutional Law.

The Board considers discussion of the motions and rulings an important element of this Decision, however, to improve readability, the detailed discussion of the rulings and directions is provided in Appendix 5.

2 PRELIMINARY ISSUE - WEIGHT TO BE GIVEN UNSPONSORED EVIDENCE

A further and critical issue arose with respect to the weight to be accorded evidence that was not sponsored by a witness panel. This issue arose in two very different contexts.

- Evidence that was supported by a participant, but not spoken to by a witness panel (Supported but Un-sponsored Evidence).
- Evidence which was either: filed by a party which initially supported such evidence, but then withdrew its support and did not present a witness panel to sponsor such evidence; or filed by a party which initially supported such evidence, sat a witness panel to sponsor the evidence which was then subjected to cross-examination, but support for the underlying evidence and associated testimony was then withdrawn by its proponent as the consequence of a subsequent occurrence of certain events or a change in circumstances (Un-supported and Un-sponsored Evidence).

Supported but Un-sponsored Evidence and Un-supported and Un-sponsored Evidence are collectively referred to as Un-sponsored Evidence.

The Board considers this issue to be important in understanding how the Board evaluated the extensive evidence of this proceeding. Accordingly, an extensive discussion relating to this matter, including Board conclusions, is included in this Decision. However, to improve readability of the Decision, the detailed discussion of this issue is provided in Appendix 6.

3 MATTERS TO BE ADDRESSED IN THE INQUIRY DECISION

The scoping documents and Final List of Issues identified the matters to be dealt with by the Inquiry. In addition, certain related matters arose during the course of the Inquiry. After reviewing the record, the Board has concluded that there are three major issues that it must deal within this Decision:

- NGL extraction rights and whether or not the current extraction rights convention or tariff provisions should be changed;
- Ongoing regulatory policy respecting lean gas streaming; and
- Ongoing regulatory policy respecting co-streaming and side-streaming.

The Board recognizes that these issues are integrally connected to the short, medium and long term outlook for the supply and demand for natural gas and the resulting impacts on NGL. Therefore, prior to dealing with the three major issues, the Board will first deal with the supply and demand for natural gas and NGL.

4 SUPPLY AND DEMAND

4.1 Views of Inquiry Expert and Participants

The Inquiry Expert provided an assessment of Alberta's natural gas outlook with analysis of Alberta's natural gas reserves, supply, and demand to 2028 to determine gas supplies available for processing. The Inquiry Expert also provided an assessment of Alberta NGL supply and demand to 2028.

The Inquiry Expert concluded that Alberta supply is declining and coupled with growing Alberta gas demand driven by oil sands growth, natural gas available for processing and NGL production will decline, as illustrated in Figure 2 which was filed by the Inquiry Expert. The Inquiry Expert expected marketable gas production to decline to 6.7 billion cubic feet per day (Bcf/d) by 2028, an almost 50 percent decline from current production levels of 13.1 Bcf/d.⁵⁰

Alberta gas demand is expected to grow by 3.1 percent per year to 2028 according to the Inquiry Expert. By 2028 Alberta gas demand will double from current requirements of 3.4 Bcf/d to 6.7 Bcf/d,⁵¹ leaving no gas available to the border straddle plants.⁵²

The Inquiry Expert expected natural gas from the Mackenzie Delta will come on stream by November 2014 at 0.8 Bcf/d and that Alaskan gas will start production in November 2018 (or at

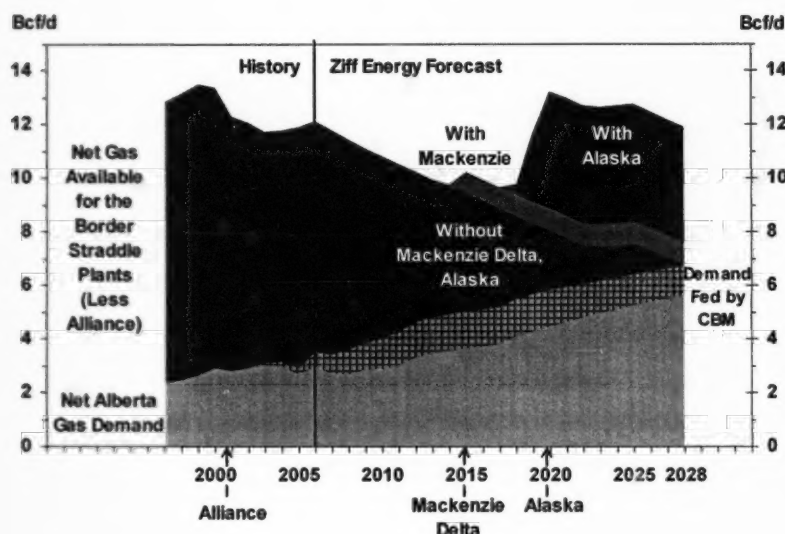
⁵⁰ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-5, Section 5.3.1, lines 11-12

⁵¹ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-12, Section 5.4.1, lines 4-6

⁵² Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-6, Section 5.3.1, lines 5-6

the end of 2017⁵³) at 2.2 Bcf/d ramping up to full volumes of 4.4 Bcf/d by November 2019.⁵⁴ The Inquiry Expert explained that they chose to model Mackenzie Delta and Alaskan gas supply to start-up prior to 2020, knowing that gas production from these northern supplies may be challenged to flow, primarily due to the anticipated high cost to connect these gas supply sources.⁵⁵

Figure 2: Net Natural Gas Supply Available for NGL Extraction⁵⁶



Without Mackenzie Delta and Alaska gas (Northern Gas) and other sources of ex-Alberta gas, NGL production from Alberta field gas processing plants will taper off due to declining conventional gas production, according to the Inquiry Expert. They also predicted that NGL production from intra-Alberta straddle plants (straddle plants that are not processing natural gas destined for export from Alberta) will be fairly stable as the plants process gas for the residential

⁵³ Transcript Volume 7, page 773

⁵⁴ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-35, Section 5.7.12, lines 43-44 to page 5-36, lines 7-8

⁵⁵ Further discussion on the forecast of the arrival of Alaska gas occurred during oral testimony as included below. Transcript Volume 7, page 660, lines 18-25 to page 661, lines 1-7, Mr. Weisberg questions Ziff Panel

Q. Thank you. I have a very brief quote from WEG Ziff 1, it's a short sentence, I don't think it's necessary to turn it up. It's this: "Ziff Energy's report uses a November 2018 date as the earliest that Alaska gas could arrive and Ziff Energy acknowledges that this date may be found to be optimistic."

Q. What's the pessimistic view, the latest that Ziff would expect Alaskan gas to arrive in Alberta?

A. MR. GWOZD: Actually never. So for this purpose of the inquiry, I would just say post 2028 as opposed to provide a date beyond 2028, but there are scenarios where Alaska gas may never arrive, I don't want to say into the Province of Alberta, but may never flow into Canada.

⁵⁶ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-23, Figure 11, lines 16-39

and commercial gas markets.⁵⁷ The Inquiry Expert assumed that straddle plants on the ATCO Pipelines System plus one other intra-Alberta plant at Joffre will continue to operate over the forecast period, but that no new plants will be added. The Inquiry Expert projected that NGL production from Alberta border straddle plants will see declining NGL production as gas production and exports decline.⁵⁸

With Northern Gas, the Inquiry Expert projected NGL production from Alberta border straddle plants will decline until 2015 when Northern Gas is projected to begin flowing through Alberta.⁵⁹

The Inquiry Expert outlined that there is currently a shortage of ethane supply to meet demand in the province and that there will be a continuing shortage.⁶⁰ The Inquiry Expert believed that Northern Gas will provide additional ethane supplies, but said these supplies would not be sufficient to meet ethane demand over the forecast period. The Inquiry Expert assumed that current straddle plant ethane recovery efficiency is 65 percent. The Inquiry Expert's understanding was that extraction efficiencies could be increased to as high as 80 percent at processing plants with capital improvements, but the Inquiry Expert's forecasts did not reflect any increases in existing plant efficiencies.⁶¹

In response to the Board's Information Requests and Shell's request at the Inquiry for the Inquiry Expert to include incremental sources of ethane in their assessment of ethane supply, the Inquiry Expert provided forecasts of additional ethane that could be available in Alberta. Based on sensitivity analysis of ethane supply from all sources and assuming 85 percent recovery efficiencies at the border straddle plants as well as increased efficiencies for ethane supply from oil sands off-gas, the Inquiry Expert's tabulation⁶² showed ethane supply greater than demand over the forecast period (except for 2009). The Inquiry Expert provided additional sensitivity analysis assuming 65 and 75 percent recovery efficiencies as well for information purposes.

The Inquiry Expert believed that Alberta propane and butanes supply is sufficient to meet Alberta demand over the forecast period. Conversely, the growth of pentanes plus demand in Alberta will continue at a growth rate of 2.1 percent and the Inquiry Expert believed incremental pentanes plus will have to be imported to meet the increased demand.⁶³

ATCO Midstream Ltd., BP Canada, IPF and Spectra Energy Empress L.P. (the Amended SPG) stated that Alberta gas production is declining, intra-Alberta consumption is growing and as these trends continue, significantly less gas will be available to the border straddle plants.⁶⁴ In its view, the current supply/demand dynamic seriously threatens the viability of border straddle plant extraction. All factors serve to significantly reduce flows at the borders.

⁵⁷ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-22, Section 5.6, lines 6-8

⁵⁸ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-22, Section 5.6, lines 9-10

⁵⁹ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-24, Section 5.6, Table 8 "Gas Available for Straddle Plant NGL Extraction (Bcf/d)"

⁶⁰ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 6-30, Section 6.6, Table 13 "Alberta Ethane Supply vs. Demand to 2028"

⁶¹ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 6-29, Section 6.6, lines 8-10

⁶² Exhibit 053-014 Ziff Energy Group Ethane Efficiency Sensitivities Worksheet, February 8, 2008

⁶³ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 6-35, Section 6.9, lines 8-10

⁶⁴ The Amended SPG Written Argument, September 5, 2008, page 3, Item number 8

The Amended SPG submission included the Purvin & Gertz report, *Alberta Natural Gas Supply*.⁶⁵ The report predicts significant increases to Western Canadian natural gas consumption over the next several years. According to the report, the decrease in conventional Alberta production combined with increased domestic consumption implies that exports will decline. Purvin & Gertz noted that the EUB provided⁶⁶ a similar demand forecast and conclusions.⁶⁷

The Amended SPG submitted that the Purvin & Gertz forecasts indicate that due to the decline in export gas volumes, the utilization rate of Alberta's export-point straddle plants will continually decline from approximately 65 percent in 2006 to less than 35 percent by 2015.⁶⁸

According to the Amended SPG, forecasts presented to the Inquiry indicate the potential addition of gas supply from Mackenzie Delta is not expected before 2016 and from Alaska realistically not before 2020.⁶⁹ These additions of supply will not resolve border supply shortfalls. Depending on initial flow rates, even with the Alaska and Mackenzie volumes, the straddle plant utilization rates would only increase from less than 35 percent to approximately 50 percent for a few years before export volumes and utilization rates begin to decline once again,⁷⁰ based on the analysis of the Inquiry Expert on the supply of natural gas available for straddle plant NGL extraction.⁷¹

The Amended SPG added that it is not reasonable, for at least ten years, to rely on Alaska and Mackenzie Delta gas as a means of maintaining gas exports or overall NGL recovery. It indicated that the Inquiry Expert recognizes there is uncertainty associated with Mackenzie Delta and Alaskan gas.⁷² The SPG also brought forward⁷³ that the NEB noted in its energy market assessment report entitled, *Canada's Energy Future*,⁷⁴ that "As the timing, scale and configuration of a potential Alaskan gas project are highly uncertain at this point; Alaskan gas volumes have not been included in the projections".⁷⁵ According to the SPG, considering the uncertainties surrounding Northern Gas volumes, it is not practical to rely on these supplies alone to solve the problem of declining border flows. Action to maximize the NGL content of the Common Stream is required, such as streaming of lean gas and clear guidelines for side-streaming and co-streaming applications.

Inter Pipeline Fund and Provident Energy Ltd. (IPF/PVE) believed that the rapid increase in gas demand combined with the leveling and decline of gas production, implies a significant reduction in gas exports. IPF/PVE explained that the mainline straddle plant utilization is currently around 65 percent of the total installed straddle capacity.⁷⁶ This utilization rate will

⁶⁵ Exhibit 042-02-06 Straddle Plant Group- Alberta Natural Gas Supply by Purvin & Gertz - August 28, 2007

⁶⁶ Alberta Energy and Utilities Board ST98-2007 Report "Alberta's Energy Reserves 2006 and Supply/Demand Outlook 2007-2016", June 2007, Figure 5.36, page 5-33

⁶⁷ Exhibit 042-02-06 Straddle Plant Group- Alberta Natural Gas Supply by Purvin & Gertz - August 28, 2007, page III-3 "Other Forecasts"

⁶⁸ The Amended SPG Written Argument, September 5, 2008, page 6 to page 7, Item number 17

⁶⁹ Ibid

⁷⁰ Ibid

⁷¹ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-24, Section 5.6, Table 8 "Gas Available for Straddle Plant NGL Extraction (Bcf/d)"

⁷² The Amended SPG Written Argument, September 5, 2008, page 7, Item number 18

⁷³ Ibid

⁷⁴ Exhibit 053-016, Exhibit 053-017, and Exhibit 053-018, National Energy Board, "Canada's Energy Future: Reference Case and Scenarios to 2030, November 2007, Report, Appendices and Errata

⁷⁵ Exhibit 053-016, National Energy Board, "Canada's Energy Future: Reference Case and Scenarios to 2030", November 2007, Executive Summary, page xx

⁷⁶ Exhibit 053-082-01, Revised Evidence of Provident Energy Ltd. and Inter Pipeline Fund, July 8, 2008, page 2, Number 3

continue to decline as prevailing forecasts predict a continuation of a rising intra-Alberta gas demand and a flat to declining provincial supply of gas. IPF/PVE explained that by 2016 it is projected that the gas available for removal from Alberta will decrease by approximately 35 percent from 2006 levels.⁷⁷ Northern Gas from the Mackenzie Delta or Alaska could offset the reduction of export volumes, but this will not occur until at least 2015.⁷⁸ IPF/PVE noted that the State of Alaska (SOA) predicted⁷⁹ that Alaska gas would not realistically start to flow prior to 2020.⁸⁰

NGTL agreed that the WCSB production is flat and declining, that intra-Alberta consumption is increasing and as a result exports are declining, and impact the availability of NGL from the existing straddle plant infrastructure.

NGTL provided a 15-year forecast of intra and ex-Alberta deliveries on the NGTL System with and without Northern Gas as summarized in Table 3. The NGTL System currently moves gas produced from Alberta, British Columbia and the Northwest Territories.

Table 3: Historical and Forecast NGTL System Flows⁸¹

Forecast NGTL System Flows					
	Intra Alberta Receipt (Bcf/d)	Ex Alberta Receipts (Bcf/d)	Intra Alberta Deliveries (Bcf/d)	Ex Alberta Deliveries (Bcf/d)	Throughput (Bcf/d)
2007	10.3	0.9	2.1	9.1	11.2
2022 with Northern Gas	7.6	7.0	5.0	9.5	14.5
2022 without Northern Gas	7.9	0.5	4.5	3.9	8.4

The forecast illustrates that if Northern Gas does not arrive or otherwise bypasses the NGTL System by 2022, throughput is forecast at 8.4 Bcf/d, significantly lower than the 11.2 Bcf/d in 2007, with export deliveries at 3.9 Bcf/d. The outcome would result in lower NGL supplies for NGL consuming industries and higher gas transportation rates for NGTL System shippers.

NGTL forecasted throughput volumes of 14.5 Bcf/d and export volumes at 9.5 Bcf/d in 2022 including Northern Gas, with approximately 6 Bcf/d accounting for the additional gas supplies. NGTL believed implementation of the NEXT Model will attract Northern Gas, thereby increasing the quantity of NGL available for value added upgrading within Alberta.

NGTL confirmed that the NGTL System delivers rich gas to the straddle plants. Most NGL rich gas is produced on the western side of the Province and is delivered into the NGTL System's west leg, upstream of James River. Almost 100 percent of the NGL delivered into the NGTL System's west leg upstream of James River are delivered to a straddle plant.⁸²

NGTL stated that most Alberta demand is centered in four areas near Fort McMurray, Cold Lake, Edmonton and Calgary. Generally, deliveries to these gas markets are satisfied through locally produced lean gas supplies or gas that has been processed at field extraction plants located close by. While there are small pockets of rich gas on the NGTL System that do not

⁷⁷ Inter Pipeline Fund and Provident Energy Ltd. Written Argument, September 5, 2008, page 2, Number 5

⁷⁸ Inter Pipeline Fund and Provident Energy Ltd. Written Argument, September 5, 2008, page 2, Number 6

⁷⁹ Transcript Volume 10, pages 1159-1160

⁸⁰ Inter Pipeline Fund and Provident Energy Ltd. Written Argument, September 5, 2008, page 3, Number 6

⁸¹ Exhibit 034-03, NGTL Submission, August 28, 2007, page 6 of 30 Table 1 "Historical and Forecast Alberta System Flows Including Alaska and Mackenzie Delta Gas"

⁸² Exhibit 034-03, NGTL Submission, August 28, 2007, page 7, lines 2-7

access straddle plants, in excess of 90 percent of NGL received onto the NGTL System are available to straddle plants.

NGTL's evidence was that it does not forecast NGL content on the NGTL System. NGTL forecasts the volume of natural gas that it expects to receive at each field receipt point and, for planning purposes, multiplies its forecast of natural gas volume at each receipt point by the current composition of gas at each receipt point to derive an estimate of system gas composition.

NOVA Chemicals agreed that future Alberta gas production will be flat or declining while NGTL's intra-Alberta gas deliveries will increase. Without additional ex-Alberta gas supplies, there will be lower gas flows at border delivery points and lower gas flows at straddle plants in the future. That in turn, will reduce NGL availability at those straddle plants and ethane recovery from those plants for value-added upgrading by the Alberta petrochemical industry.

Imperial Oil Resources and ExxonMobil Canada Energy (Imperial/EMC) had no substantial disagreement concerning the gas and NGL supply outlook as detailed by the Inquiry Expert's report, although Imperial/EMC indicated that the "timing of Alaskan gas is uncertain and will take at least a decade to complete the project once it is started."⁸³ They indicated that the major factor which will affect the supply outlook is the prospect of attracting ex-Alberta gas to the Alberta Hub.

Shell submitted that there was evidence to suggest significant potential for increased ex-Alberta supply and intra-Alberta demand, although Shell indicated that it "does not know when Alaskan gas is likely to begin flowing into Alberta."⁸⁴

The ADOE submitted that the natural gas supply/demand forecasts demonstrate excess pipeline capacity within Alberta over the forecast period.

4.2 Board Conclusions

The Board has considered the evidence of all parties in respect of Alberta's natural gas and NGL supply and demand forecasts. Much of this evidence is summarized in Figure 3. The Board understands that every forecast is an estimate and that forecasts are reflective of the information that is available at that time. The ERCB forecasts natural gas supply and demand for a ten-year period, and all forecasts provided by participants in their evidence generally agree with the main trends in these published ERCB forecasts⁸⁵ over that same time period. The various forecasts, as illustrated in Figure 3, show projections of declining total Alberta gas production from conventional and unconventional sources and increasing intra-Alberta demand between 2007 and 2017. The ERCB forecast does not include Northern Gas in its ten-year projection of gas supply for the 2007 to 2017 period. The Board considers that all of these forecasts share similar assumptions and therefore are considered reasonable relative to the published ERCB forecasts.

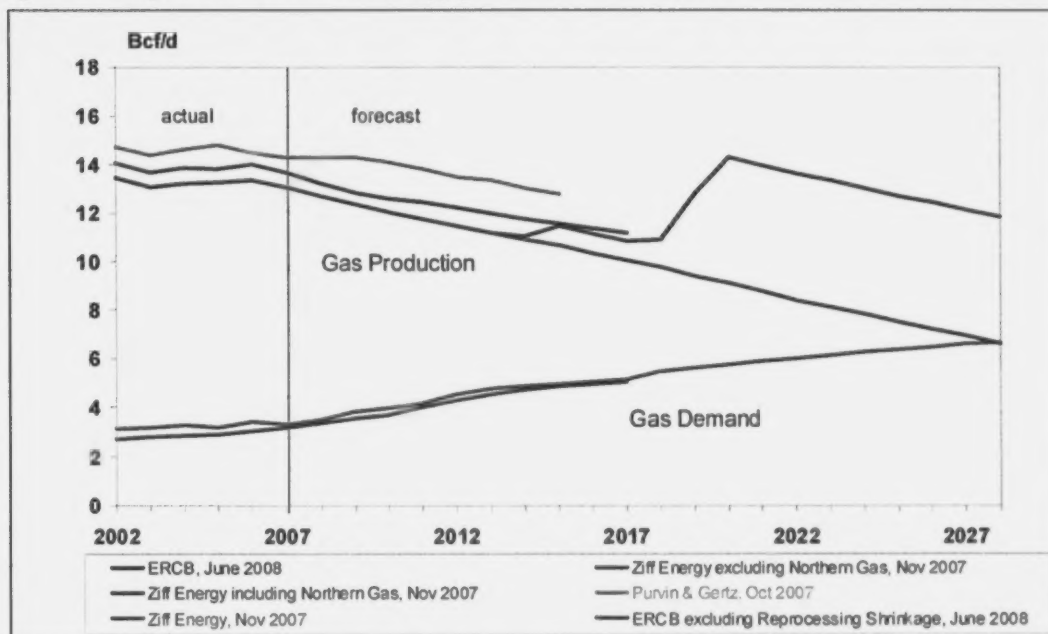
⁸³ Exhibit 016-05-06, Imperial/EMC Responses to Provident Energy Limited, October 9, 2007, PVE-IOR/EMC-1

⁸⁴ Exhibit 039-05-06, Shell Canada Energy Et Al Responses to Provident Energy Limited, October 10, 2007, PVE-Shell-1

⁸⁵ The ERCB publishes their natural gas supply and demand projections on an annual basis in a report entitled "*Alberta's Energy Reserves and Supply and Demand Outlook*", also known as the ST98 report. The report is available on the ERCB website at www.ercb.ca. The Board considered the 2007 ST98 forecast referred to in the Inquiry Expert's report and has looked at the 2008 forecast for consistency. The 2008 natural gas supply forecast is similar to the 2007 version but shows a somewhat steeper decline in gas production over the forecast period. The 2008 natural gas demand forecast is similar to the 2007 version as well but shows a slightly steeper increase in gas demand from 2011 forward. Given the similarities, the 2008 forecasts are referenced in this Decision.

With respect to the forecasts beyond the 2007-2017 period the Board concurs with the general trends with and without Northern Gas as projected in the Inquiry Expert forecast for the 2018 to 2028 time period as reflected in Figure 3 below. Although the timing of Northern Gas is uncertain from a forecasting perspective, the supply and demand forecasts for Alberta natural gas and NGL clearly demonstrate that attracting Northern Gas and other ex-Alberta supplies to use Alberta infrastructure are critical to the long term interests of the NGTL system, the existing straddle plants and the Alberta petrochemical industry. The Board's findings in this regard are more fully addressed in Section 5.3.2 in connection with a consideration of the need to make a change in the NGL extraction convention.

Figure 3: Comparison of Natural Gas Supply and Demand Forecasts⁸⁶



Ethane and other NGL production volumes have historically been a function of raw gas production, liquid content, field and straddle plant recovery efficiencies and prices. For ethane, demand plays a major role in future extraction. The ERCB's published forecasts of ethane supply and demand in comparison with forecasts provided by the Inquiry Expert⁸⁷ are shown in Figure 4 which has been prepared by Board staff. Also included are ethane supply and demand forecasts as published by the NEB and submitted by the Board during the Inquiry.⁸⁸ The Inquiry Expert was the sole participant to provide ethane and other NGL forecast estimates.

It should be emphasized that the ERCB ethane supply forecast is of "potential" supply. The degree to which ethane will actually be supplied from the various gas streams and oil sands sources will depend on the demand for ethane. The evidence presented at the Inquiry indicated

⁸⁶ Data derived from Exhibit 049-05-01 page 5-10, Table 4 and ERCB ST98-2008 Report, June 2008, page 7, Figure 4

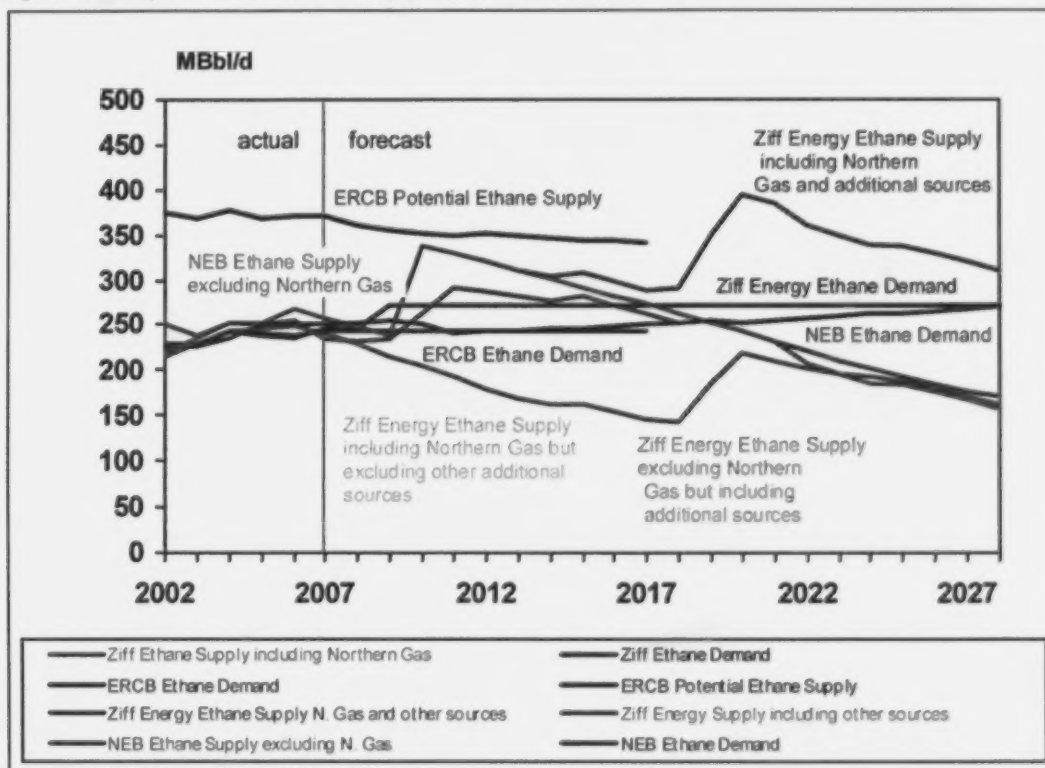
⁸⁷ Exhibit 049-05-01, Ziff Energy Inquiry Expert Submission Part 2, page 6-27, "Ziff Energy used the growing NGL demand forecast provided by the AEUB to 2016. After 2016, Ziff Energy 'flattened' the NGL demand to reflect our view of declining NGL supply".

⁸⁸ Transcript Volume 8, pages 812-814

that there may be opportunities for increased recovery efficiencies at Alberta's field gas processing plants and border straddle plants as demand and economics dictate.

The evidence also suggests that off-gas, which is a by-product of the production and upgrading of bitumen into synthetic crude oil is a potential source of ethane, propane and butanes. Interest in natural gas liquids recovery from off-gas is increasing and may impact future NGL supplies including ethane.

Figure 4: Comparison of Ethane Supply and Demand Forecasts⁹⁹



The ERCB's published ten-year forecast considered ethane from conventional gas supply and ethane from oil sands off-gas.⁹⁹ Figure 4 shows the ERCB's "potential supply" exceeding demand over the forecast period. The "potential supply" estimates were calculated based on the assumption that the volume-weighted ethane content of conventional gas in Alberta is

⁹⁹ Data derived from Exhibit 049-05-01, Ziff Energy Inquiry Expert Submission Part 2, page 6-30, Table 13, Exhibit 053-14, Undertaking Response from a Discussion at Transcript Pages 309 through 311, Consisting of a Cover Page and Three Worksheets and ERCB ST98-2008 Report, June 2008, pages 6-9, 6-10 and 6-11, Figures 6.5, 6.6 and 6.7

⁹⁰ ERCB ST98-2008 Report, June 2008, page 6-8, Figure 6.4. The Board considered the 2007 ST98 forecast referred to in the Inquiry Expert's report and has looked at the 2008 ST98 forecast for consistency. The 2007 and 2008 ethane supply and demand forecasts show similar trends. The ethane demand forecast in 2008 is lower based on the assumption that the four ethylene plants in the province that use ethane as a feedstock will operate collectively at an 80 per cent capacity utilization rate based on historical levels. In the previous 2007 forecast, the ERCB assumed throughput volumes at the ethylene plants would increase to 90 per cent of ethylene capacity over the forecast period.

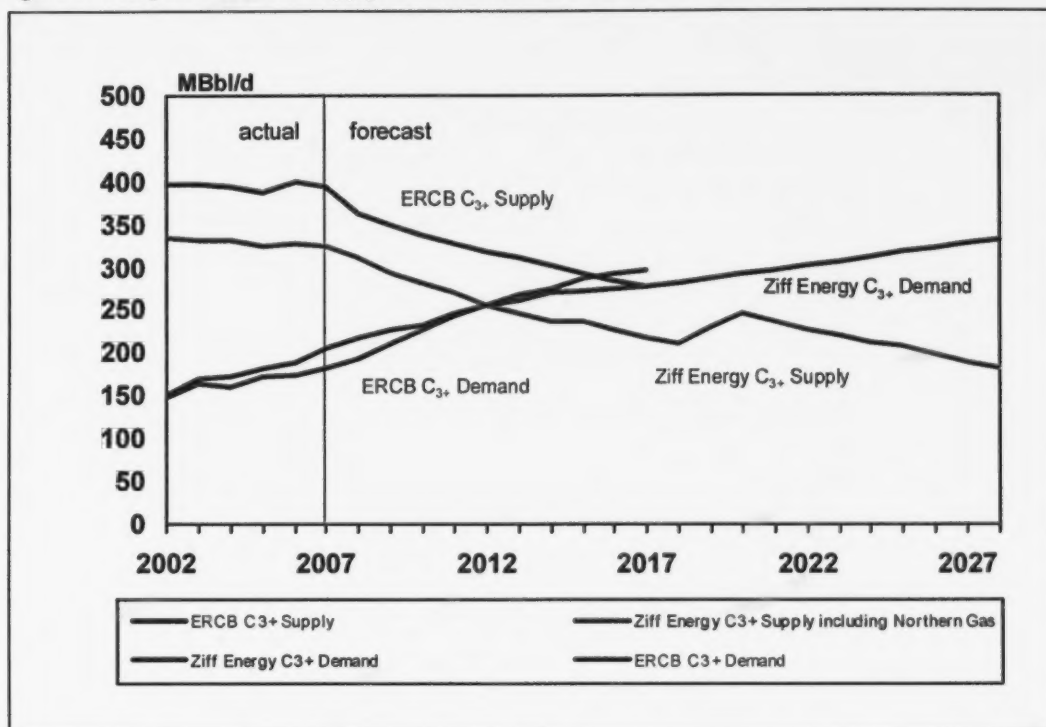
0.05 mol/mol and that 80 percent of ethane can be recovered at processing facilities. The ethane supply volumes from oil sands off-gas were determined assuming a 12 percent ethane content in the off-gas production and an 80 percent recovery rate of ethane.

The ERCB's demand forecast assumes the existing ethylene plants will continue to operate at an 80 percent capacity utilization rate and that no new ethylene plants requiring ethane as feedstock will be built in Alberta over the forecast period. Small volumes of ethane are exported from the province and these volumes are included.

The ERCB's forecast is in contrast to the Inquiry Expert's initial assessment that there is currently a shortage of ethane supply to meet demand in the province and that there will be a continuing shortage in the future as shown by their forecasts in Figure 4. Further ethane supply analysis by the Inquiry Expert in response to questioning at the Inquiry to include additional sources of ethane in their assessment of ethane supply is also shown. In this case, assuming 85 percent recovery efficiencies, ethane supply is greater than demand over the ERCB's forecast period (except for 2009). With respect to the forecasts beyond the 2007-2017 period, the Board concurs with the general trends projected in the Inquiry Expert's enhanced ethane supply forecast for the 2018 to 2028 time period, except to the extent they rely on the inclusion of Northern Gas as reflected in Figure 4. This forecast is similar to the NEB ethane supply projection that excludes ethane supplies from the Mackenzie Delta.

Figure 5 was prepared by Board staff and compares the ERCB's published forecast for the supply and demand of total propane, butanes and pentanes plus specification products (C_{3+}) with the Inquiry Expert's estimates.⁹¹ The evidence generally agrees that C_{3+} supply will decline with declining Alberta conventional gas production and that demand is growing, specifically for pentanes plus for use as oil sands diluent. The Board believes that the ERCB's C_{3+} historical production and forecast supply volumes are greater than those of the Inquiry Expert as the ERCB includes specification product that is currently recovered from Alberta C_{3+} mix, at fractionation facilities outside of Alberta. With respect to the forecasts beyond the 2007-2017 period, the Board concurs with the general trends projected in the Inquiry Expert's enhanced ethane supply and demand forecasts for the 2018 to 2028 time period, except to the extent they rely on the inclusion of Northern Gas, as reflected in Figure 5.

⁹¹ ERCB ST98-2008 Report, June 2008, pages 6-9, 6-10 and 6-11, and Figures 6.5, 6.6 and 6.7, The Board considered the ST98 2007 forecast referred to in the Inquiry Expert's report and has looked at the ST98 2008 forecast for consistency. The 2007 and 2008 C_{3+} supply and demand forecasts show similar trends and given the similarities, the 2008 forecast is referenced.

Figure 5: Comparison of C₃₊ Supply and Demand Forecasts⁹²

The flow of Northern Gas through Alberta might utilize Alberta's infrastructure, add significant volumes of gas for reprocessing and could increase supplies of NGL into the Alberta market. However, there remains a large degree of uncertainty as to the timing, scale and configuration of a future project.

The projections shown in these figures will be used by the Board as background in its consideration of the matters before it. On the basis of these projections, the Board concludes that the natural gas transportation infrastructure in Alberta may be increasingly under-utilized in the coming years without additional supplies coming onto the NGTL System from outside the province. The Board recognizes that there are inherent uncertainties in all forecasts, and that these uncertainties increase with longer-term outlooks, but notes that the forecasts provided during this Inquiry all support the above conclusion. The Board concurs with the view that without incremental natural gas supply there may be declining flows of gas to straddle plants and reduced volumes of NGL. This could be problematic, especially with respect to ethane and its role as a primary feedstock for the petrochemical industry and for pentanes plus and its use as diluent for transporting the growing production of bitumen. Ethane supplies from oilsands offgas will help provide adequate supplies of ethane to meet existing ethane demand and increased imports of pentanes plus will be required to meet the demand for growing oilsands production.

⁹² Exhibit 049-05-01, Ziff Energy Inquiry Expert Submission Part 2, pages 6-31, 6-34 and 6-36, Tables 14, 15 and 16 and ERCB ST98-2008 Report, June 2008, pages 6-9, 6-10 and 6-11, Figures 6.5, 6.6 and 6.7

What is clear is that the timing of incremental natural gas supply from Alaska is uncertain, as illustrated by the following discussion with the Inquiry Expert:⁹³

Q. "Ziff Energy's report uses a November 2018 date as the earliest that Alaska gas could arrive and Ziff Energy acknowledges that this date may be found to be optimistic." What's the pessimistic view, the latest that Ziff would expect Alaskan gas to arrive in Alberta?

A. MR. GWOZD: Actually never. So for this purpose of the inquiry, I would just say post 2028 as opposed to provide a date beyond 2028, but there are scenarios where Alaska gas may never arrive, I don't want to say into the Province of Alberta, but may never flow into Canada.

There is also uncertainty related to the arrival of Mackenzie Delta gas and to some extent north-eastern British Columbia shale gas.⁹⁴

5 NGL EXTRACTION CONVENTIONS

The NGL Inquiry included extensive evidence regarding the Current Convention on the NGTL System as well as proposals to replace the Current Convention. Significantly less evidence was provided by parties with respect to the ATCO Pipelines System, although it does have a number of NGL extraction facilities and established tariff procedures dealing with extraction rights. Even less evidence was offered with respect to the AltaGas Utilities system as it does not have existing extraction facilities, although it has established tariff language similar to that of ATCO Pipelines. Shell and Imperial/EMC recommended that ATCO Pipelines and AltaGas Utilities should be administered in a fashion consistent with the NGTL System and past Board decisions thereby warranting a change to the Terms and Conditions on these systems.

Section 1.2.3.1 describes the Current Convention. The Board heard from proponents of the status quo arguing that the Current Convention is easy and cost-effective to administer and that there is no reason to change it. Critics of the convention portrayed it as inequitable to producers, anachronistic because it failed to keep up with the evolution of natural gas markets and pipeline transportation, and inconsistent with earlier Board findings that producers should be able to realize the value of the NGL content in their gas. As discussed in Section 1.2.4 the NECTF was an industry wide effort that endeavored to achieve agreement as to whether there was a need to change the Current Convention, and if there was a need, how it should be changed. In part, it was the lack of consensus of the NECTF that resulted in this Inquiry.

Although the scope of the Inquiry included consideration of all of the alternatives to the NGTL Current Convention identified in the NECTF Report, the Inquiry Expert and most of the parties focused their evidence on either maintaining the Current Convention or adopting a receipt point convention.

The Western Exporters Group (WEG) did not consider that adequate attention had been provided by the Inquiry Expert with respect to an Equalization Model and whether it considered such a model could be utilized in conjunction with the Current Convention. This was discussed in Section 1.2.4.1.

This section of the Decision addresses perspectives regarding the drivers to change the Current Convention; considers the convention alternatives, including maintaining the status quo; and provides recommendations. The Board will describe the convention alternatives that were

⁹³ Transcript Volume 7, pages 660 - 661, Mr. Weisberg questions Ziff Panel

⁹⁴ Exhibit 049-05-01, Ziff Energy Group Inquiry Expert Submission Part 2, November 2007, page 5-34

discussed in the Inquiry and subsequently assess key considerations with regard to assessing a preferred convention for the future.

5.1 Impetus for Considering a Convention Change on NGTL

The NECTF Report identified a number of issues that were categorized as Perceived Inequities. NECTF participants were unable to reach consensus as to whether the Perceived Inequities were real or fictitious. In this Inquiry, the majority of the evidence continues to reflect a division between parties supporting the Current Convention and parties favouring a receipt point convention.

5.1.1 Supporters of the Current Convention

Parties in support of maintaining the Current Convention included those operating border straddle plants and parties that exclusively hold export delivery service on the NGTL System. Parties who hold export delivery service on NGTL are the benefactors under the Current Convention as they are in the position of holding extraction rights and negotiating whatever value they can for these rights with the extraction plant operators. The extraction plant operators have contractual arrangements in place with the shippers holding the export delivery service. The terms of these contractual arrangements were a contentious issue in the Inquiry, however, the related contracts were not disclosed in detail. The straddle plants preferred to maintain the status quo with negotiations for extraction rights occurring with the holders of export delivery service rather than with a larger number of receipt shippers or producers. In aggregate, the supporters of the Current Convention found the benefits associated with the Current Convention to align with their business needs.

Pembina Pipeline Corporation (Pembina Pipeline) argued that the materiality of any perceived inequity associated with the Current Convention was not significant. It pointed out that the inequity is limited to producers/receipt shippers that do not hold Firm Transportation-Delivery (FT-D) service. It also questioned why producers, who do not receive extraction rights on other pipelines, do not view it as a burden on these other pipelines.

The Amended SPG cautioned that imposing any new rules and regulations on the NGTL Common Stream may affect the future viability of the industry.⁹⁵ It also emphasized that with the significant challenges now confronting the extraction industry, additional uncertainty and cost must be avoided. The Amended SPG pointed to the importance of having arrangements which permit the straddle plants to take title to the gas from parties who have caused it to be delivered to the point of extraction and who are able to assure legal title to that gas at the point where it is severed from the NGTL Common Stream. It suggested that this exists under the Current Convention, whereas it would not exist under a receipt point convention.

WEG/Tenaska submitted that a change to the convention must be weighed against the degree of the inequity that may exist, and against the significant and ongoing contribution of FT-D shippers to the public interest under the Current Convention. It submitted that a change to the Current Convention would be grossly unfair to parties that solely hold FT-D service, and would ignore the fact that commercial arrangements were entered into based on parties' understandings of the historic practice under the Current Convention.⁹⁶

⁹⁵ The Amended SPG Argument, page 4, paragraph 10

⁹⁶ WEG/Tenaska Reply Argument, page 5

WEG/Tenaska suggested that any inequity is largely offset by lower Firm Transportation-Receipt (FT-R) tolls on the NGTL System and the fact that the inequities only apply to a specific set of FT-R shippers that do not hold FT-D service, and those who have placed gas on the system that is richer in composition than the Common Stream content.⁹⁷ It emphasized that the inequity must also be viewed in the context that, under the Current Convention, a producer already has three options to obtain the uplift values⁹⁸ for its NGL: they may use field extraction; negotiate a price that reflects the uplift value for a sale at NIT; or take FT-D service and contract directly with the straddle plants.⁹⁹

WEG/Tenaska also noted that the materiality of the inequity must also be considered against any new inequities that would result from a change to a receipt point convention. It emphasized those shippers that hold FT-D service would lose their extraction rights, but gain nothing in return. It also pointed out that the receipt point convention proposed by NGTL has no mechanism to ensure that the NGL value obtained through the transfer of rights will find its way back to the majority of producers who do not hold FT-R service. It also noted that Firm Transportation-Points-to-Point shippers will get extraction rights allocated, yet most of the deliveries are to intra-Alberta markets.

WEG/Tenaska questioned the degree of unfairness alleged by parties that suggested that the Current Convention prevents producers from fully capturing the value of their NGL in a free and open marketplace. It pointed out that the benefits received from extraction rights are secured by bearing the cost of purchase/sale, transportation, and extraction agreements. It noted under a receipt point convention someone will have to bear the cost and commitment of holding FT-D service in order to transport gas and entrained NGL to the straddle plants, where the uplift value of NGL may be directly obtained.

WEG/Tenaska suggested that little reliance should be placed upon changing the Current Convention with respect to attracting Alaska gas as that was a long term future consideration that may be subject to other NGL upstream processing.¹⁰⁰ The Amended SPG presented a similar perspective to WEG/Tenaska wherein it considered that changing the Current Convention would be unnecessary and premature with regard to attracting Alaska gas and that it would be a factor of relatively low significance in that overall project decision.¹⁰¹

Pembina Pipeline did not consider that there was compelling evidence to support that a change in the Current Convention was urgently required to attract Alaska or MacKenzie Delta gas into Alberta.

5.1.2 Supporters of Changing to a Receipt Point Convention

Producers were concerned that the Current Convention requires them to subscribe to export delivery service on NGTL that they may not otherwise desire to hold, in order to be able to enter into an extraction contract with a border straddle plant on the NGTL System. Moreover, producers were concerned that they are unable to obtain the appropriate market values associated with the NGL components and can only obtain the value of the NGL on the basis of natural gas energy rather than the uplift value of the extracted gas stream components heavier than methane.

⁹⁷ WEG/Tenaska Argument, page 8

⁹⁸ Defined by Imperial/EMC as the market price differential between the heating value of NGLs burned as if they were simple methane and the premium price NGLs can attract if they are sold as extracted liquids

⁹⁹ WEG/Tenaska Reply Argument, page 14

¹⁰⁰ WEG/Tenaska Argument, page 7

¹⁰¹ Amended SPG Argument, page 27

ConocoPhillips Canada Limited (ConocoPhillips) submitted the central issue supporting change is that the right of resource ownership in respect of the NGL, under the Current Convention is not with the producer of that resource. It submitted that producers should receive the benefit of the NGL extraction and that this inequity of the Current Convention was central in its support for a change.

ConocoPhillips and Shell both suggested a change to the NEXT Model would be positive with regard to attracting Northern Gas onto the NGTL System. For example, ConocoPhillips noted the following in its opening statement:¹⁰²

We note that northern gas has been a topic of much discussion in this inquiry. ConocoPhillips is a significant player in both Mackenzie Delta and Alaska North Slope gas. The ability for a northern resource owner to capture the value of a resource stream will be important to the success of any long-term infrastructure proposal.

This point was supported during cross examination by Board Counsel:¹⁰³

Q. And sir, can you tell me to what extent a change in extraction convention will influence your decision to either use Alberta extraction infrastructure or pipeline infrastructure?

A. MR. NICKS: Certainly revenue, it's certainly revenue under today's convention. You know, we'll be zero in a calculation of MPV and netback. It's a -- if it changes to receipt point it is, in my opinion, a number that will be positive, and so it will help -- it will increase the netback and it will help in the decision making of where to deliver the gas.

Shell suggested that attracting Alaska gas was not the reason for changing the convention, but instead a benefit associated with such a change. Shell highlighted that the convention change was to rectify an inequity caused to producers by the existing convention.

Imperial/EMC noted that the majority of the benefit to the uplift value inherent in NGL are reaped by the straddle plants and presently, the Current Convention prevents anyone but export shippers from bargaining for some of that value. Imperial/EMC noted that the Current Convention prevents producers from fully capturing the value of their NGL in a free and open marketplace and that a change in the convention is required to better recognize a producer's rights to the NGL entrained in their natural gas. It was Imperial/EMC's view that holding FT-D service should not be necessary in order to obtain value for NGL. It suggested that "if a shipper has no real use for delivery service, by what reasoning can it be argued they should nevertheless be forced to contract for it merely to obtain liquids values?"¹⁰⁴

The SOA noted in its opening statement:¹⁰⁵

Like any royalty owner or producer, it wants a fair value for the NGLs entrained in the gas. The State believes the perceived inequities identified in the NGL extraction convention task force September 2005 report, the NECTF report, are real, and that the current NGL extraction convention would prevent the State of Alaska and Alaska gas producers from realizing fair value for NGLs.

¹⁰² Transcript Volume 15, pages 2011 and 2012

¹⁰³ Transcript Volume 17, page 2325

¹⁰⁴ Imperial/EMC Written Argument, page 8

¹⁰⁵ Transcript Volume 10, page 1010

The State, Alaska gas producers, and TransCanada Alaska are making decisions, now, about a project that could bring gas into the NGTL system.

In that decision making process, knowing now the NGL extraction convention, the State and Alaska gas producers can expect is crucial. In that regard, the NGTL extraction model or the NEXT model is a step forward, a giant step forward in providing the State and all state producers with the assurance that they can obtain a fair value for their NGLs in a pipeline delivering their gas into the NGTL system.

Imperial/EMC, in its opening statement, commented as follows:¹⁰⁶

Imperial and EMC want to clearly state their position that a shift to a receipt point convention is first and foremost an issue of equity. ExxonMobil remains committed to the development of its Alaska North Slope gas reserves. While still considering its options, EMC can confirm that making changes that give producers/receipt shippers the opportunity to capture uplift value associated with entrained NGLs makes the NGTL System more attractive for the transportation of liquids-rich Alaska gas. It flows the value to the resource owners; it appropriately places the economic signals with the parties that control the development of the resources; it is the right thing to do.

Imperial/EMC commented that it was interesting to note the position of BP Canada which is both a large Alberta producer and a potential Alaskan shipper. BP Canada does not support a change in the convention, but it does have interests in the straddle plant business that might allow it to capture uplift value from Alaskan gas.¹⁰⁷

ADOE submitted that a change to a receipt point convention would recognize that the right of resource ownership should remain with the producer. It argued that a move to a receipt point convention would unbundle extraction rights from FT-D service and allow producers/receipt shippers to enter into contracts respecting them.

EnCana Corporation (EnCana) argued that, under the Current Convention, producers that sell their gas at NIT have no opportunity to negotiate any value for their NGL over and above their heating value. It was EnCana's position that changing to a receipt point convention would have the significant benefit of resolving the inequities inherent in the existing convention. Specifically, it would allow producers to negotiate with straddle plants to obtain fair value for their NGL without the need to hold export delivery service.

In response to Pembina Pipeline's Argument that there was no urgency to attract Northern Gas because it was impossible to say at this time whether or not a convention change would alter the decisions regarding Northern Gas, EnCana countered that such a change would provide commercial motivation to deliver gas onto the NGTL system.

Shell also countered Pembina Pipeline's views, suggesting that changing to a receipt point convention would be crucial to Alaska shippers and the Government of Alaska, and noted that Alaskan gas could go on another pipeline system other than NGTL, or be processed upstream of Alberta, such that the gas would not have a first stopping point in Alberta.

Shell stated that the existing convention makes it onerous and unnecessarily prohibitive for producers to benefit from, or hold extraction rights associated with, the NGL in the gas they produce. It was Shell's position that the benefits derived from the NGL should correspond to the ownership of the NGL when they were produced and that an equitable extraction convention must provide producers with a reasonable opportunity to realize the value of their extraction

¹⁰⁶ Transcript Volume 19, page 2609

¹⁰⁷ Imperial/EMC Argument, pages 16-17

rights. Shell also noted that any convention replacing the Current Convention should ensure that subsidies between rich and lean shippers that exist under the Current Convention are minimized.

NGTL submitted that it had proposed a receipt point convention alternative it referred to as the NGL EXTraction Model (NEXT or NEXT Model), for the most part, to resolve the inequities inherent in the Current Convention. NGTL noted that, currently, if a producer wanted to be assured of obtaining the value of its NGL it would mean that producer could not participate in the NIT market. It stated that the requirement for a producer/receipt shipper to hold FT-D service in order to obtain value for its NGL was onerous. NGTL also considered that creation of a new extraction rights model was necessary to retain gas on its system and to attract additional gas supply, particularly Northern Gas, to its system. For these reasons, it believed that the Current Convention does not provide clear economic signals and adversely impacts the competitiveness of the NGTL System. It argued that the immediate and overarching benefit of moving to the NEXT Model is the efficient attribution and allocation of the value of NGL to the shippers who placed the NGL on the system.

NOVA Chemicals believed that the potential flows of Northern Gas on NGTL would be welcome to both the producers and the ethane-based petrochemical industry in Alberta. Higher throughput on NGTL as a result of ex-Alberta gas flows can lower the tolls for all shippers, including gas producers. Higher throughput on NGTL will increase flows at border delivery points and related straddle plants, which can extract NGL entrained in the gas. In turn, ethane supplies can increase, providing security of supply to both existing and any new petrochemical upgrading capability.

NOVA Chemicals suggested that deliberate policy initiatives to encourage access to Alberta gas transportation and NGL infrastructure is essential. NOVA Chemicals colloquially referenced to those policies and associated commercial practices and infrastructure as the "Alberta Hub" for gas and NGL. A receipt point convention, according to NOVA Chemicals is a key element in creating the "Alberta Hub". It is clear from the records that parties with major interests in ex-Alberta gas supply from both the Mackenzie Delta and Alaska favour receipt point contracting, so they may have the option to receive greater value than under a export delivery point convention without incurring what many believe is the unnecessary cost of export delivery service.

Additionally, NOVA Chemicals commented that there were no guarantees that NGL would be available even if Alaskan gas passed through Alberta as it could be transported on a "bullet" pipeline that could bypass Alberta infrastructure. However, it submitted that a change to a receipt point convention would be of assistance in attracting Alaskan gas and facilitating the availability of the associated NGL.

Keyera Energy Limited Partnership (Keyera) considered the Current Convention to be inequitable and supported an evolution to a receipt point convention in order to alleviate the inequities as well as attract Northern Gas.¹⁰⁸

5.2 Convention Alternatives

As expressed in the Solex Decision, the Board remains concerned that the Current Convention may generate inequities with respect to the ability of the natural gas producers being able to achieve full value for the resources they produce. The NECTF Report identified Perceived

¹⁰⁸ Exhibit 031-03-01, Keyera Submission

Inequities and the Inquiry was called, in part, to consider these Perceived Inequities. The concerns in relation to the Current Convention warrant the exploration of alternatives in order to assess if the specific attributes of such alternatives outweigh the implications of implementing an alternative convention. The Board considers that balancing of the overall cost/benefit potential impacts, as described by the SPG, will constitute an important part of the subsequent analysis in this Decision.

In this section the Board will discuss the alternatives that were subject to discussion in the Inquiry. The following alternatives are discussed:

- NGTL NEXT Model
- Imperial CCM Model
- Shell Heating Value Model
- Gas Equalization Model

5.2.1 NEXT Model

NGTL proposed that the Current Convention should be replaced and filed evidence supporting a change to a receipt point convention and specifically, the NEXT Model.¹⁰⁹

NGTL indicated that since the Solex Decision in 2004, it has been engaged with its stakeholders in an effort to find a resolution to issues in relation to extraction rights for NGL on its system. Subsequent to the NECTF Report, NGTL considered that creation of a new extraction rights model was necessary to retain gas on its system and to attract additional gas supply, particularly Northern Gas, to its system. NGTL reviewed the alternatives presented in the NECTF Report and identified the receipt point contracting alternative as best aligning with these objectives. The concepts including informational and operational requirements of a receipt point contracting model were subsequently developed internally. NGTL indicated that it met with a number of shippers, straddle plant operators and other stakeholders to discuss the proposal and receive feedback. The NEXT Model was the result of that process.

NGTL suggested that the NEXT Model would provide receipt shippers on the NGTL System with extraction rights based on the amount and value of the NGL that a receipt shipper delivers into the NGTL System. Administration of these extraction rights in the NEXT Model would be used to direct gas to the inlet of any straddle plant.

NGTL considered that implementation of the NEXT Model would:¹¹⁰

- increase the quantity of NGL available for value added upgrading within Alberta;
- resolve inequities that exist under the Current Convention in relation to producers not being readily able to obtain fair value for their NGL;
- increase the throughput on the NGTL System resulting in reduced NGTL System rates; and
- provide a more liquid and transparent commercial business environment for gas producers, shippers and NGL extractors.

NGTL explained that the NEXT Model would provide extraction rights to receipt shippers who are either producers or parties who have purchased gas from producers. In the latter case, NGTL

¹⁰⁹ NGTL provided comprehensive details of the NEXT Model in Exhibit 034-03, pages 13-22 and Exhibit 034-07, pages 30-44

¹¹⁰ NGTL Argument, page 1-4

considered that producers would be able to negotiate for the recovery of an appropriate share of the NGL value in the sale of their gas. As a result, NGTL claimed that producers would have direct access to the value of the NGL they put onto the NGTL System. NGTL witness Mr. Clark, in response to cross-examination by counsel for IPF, indicated that he did not consider the ability of a producer to obtain fair value for its NGL from a receipt shipper to be a problem as demonstrated in the following quote:¹¹¹

A. MR. CLARK: That a producer will obtain fair value for the extraction rights from the receipt shipper. So let me explain why. First of all, a producer has a variety of options. They can strip their natural gas liquids in the field if they so choose. They can take out receipt capacity themselves if they so choose. There are many counterparties that acquire gas at the plant gate. The market is liquid and transparent.

With the NEXT model, producers will well understand what their -- what volume of extraction rights they have, and to the extent there are many counterparties with which they can choose to do business, that will result in a transparent and liquid market that should result in their obtaining the value of the extraction rights.

NGTL requested the Board to direct NGTL to implement the NEXT Model as a replacement for the Current Convention on November 1, 2010.

As discussed in Section 1.2.3, the Current Convention is not formalized in the NGTL tariff language. Given the undocumented nature of the convention to date, NGTL asked the Board to direct NGTL to file appropriate amendments to its tariff so that whatever extraction convention is adopted going forward would be clearly documented.

5.2.1.1 NGTL's Operational Concept of the NEXT Model

NGTL indicated that the NEXT Model is not complex as it is virtually the same as the Current Convention with the exception that the algorithm that is used to allocate extraction rights to shippers is different. As is the case today, NGTL indicated that it would complete the extraction rights allocation calculation and advise the extraction rights sellers and buyers so that they could complete the same type of commercial arrangements that are undertaken today.

The NEXT Model would allocate extraction rights to receipt shippers based on their percentage of the total value of NGL received onto the NGTL System. To determine the total value of all available extraction rights, NGTL would determine the volume of each NGL component at each receipt point and multiply that volume by a market value for that component. This market value would be determined utilizing the applicable ADOE Reference Price for each component. NGTL indicated that the ADOE Reference Price was selected because it is a credible, publicly available value, which accurately reflects changes in the market. NGTL pointed out that in the NEXT Model, the importance of component prices is not in their absolute value, but in their value relative to the value of other NGL.

The NEXT Model would calculate each shipper's percentage share of extraction rights based on information collected over the prior month (the "NEXT Allocation") at each receipt point that the receipt shipper delivered gas into the NGTL System. The approach would utilize NGTL's existing volumetric measurement and gas analysis techniques for NGL components as well as the monthly receipt shipper ownership allocation provided by the Common Stream Operator to calculate a shipper's allocation of NGL components at each receipt point.

¹¹¹ Transcript Volume 11, page 1306

NGTL elaborated on the basis for the ADOE Reference Prices as follows:¹¹²

The ADOE Reference Prices are based on sales transactions for propane, butane, and pentanes plus under a well defined protocol. These prices, and the ethane price which is a value "deemed" by the ADOE, are used for the calculation of royalty payments of specification products. NGTL concluded that they are best suited for the valuation of components in the NEXT calculation. The most important aspect of the component reference prices for the NEXT model is their relative values to one another as opposed to their absolute values, and the responsiveness of these values over time to changing market conditions.

The use of the ADOE reference price will not create any significant inequities as a result of market price volatility. Its impact on the NEXT Allocation calculation relative to other monthly price indicators is effectively a one month delay.

NGTL described that the market price for ethane is difficult to obtain given the small number of ethane purchasers in Alberta. NGTL indicated its understanding that the ADOE ethane price is assessed on the basis of the natural gas price plus a premium. NGTL suggested it had considered some alternative approaches for the ethane price, but concluded that obtaining a more accurate market-based price could require Board direction.¹¹³

Once the individual component values were calculated, those amounts would be added for each receipt shipper to obtain each shipper's total NGL value. This value would be divided by the total NGL value of all receipt shippers. This ratio would become the individual receipt shipper's percentage share of all available extraction rights. Each receipt shipper's volume of extraction rights would be determined by multiplying its percentage share by the volume of gas flowing to the inlet of all straddle plants on the NGTL System (the "NEXT Extraction Rights Determination").

On a daily basis, NGTL would determine the gas available to the inlet of all the Straddle Plants based on the delivery nominations downstream of the Straddle Plants. This would occur prior to the start of the gas day and again during that gas day if the delivery nominations change.

NGTL indicated it would provide each receipt shipper with an estimate of its extraction rights volume for the gas day and receive the receipt shipper's banding instruction to direct that volume of gas to fulfill extraction rights sales the shipper has made at one or more of the straddle plants. At the end of each gas day:

- the straddle plants determine the amount of gas they processed and the shippers from whom the extraction rights were purchased; and
- NGTL would report the actual total physical volume of gas that was available to the straddle plants and the actual amount of gas each straddle plant reported that it processed of that total.

If any plant has exceeded its proportionate share of the physical flow, the excess volume would be subtracted from its next day's estimated available inlet volume and added to the available inlet volume of the plants that received less than their proportionate share of the physical flow.

As under the Current Convention, any daily imbalance between the total estimated available inlet volume calculated by NGTL and the actual inlet volume of gas available to the straddle plants would be shared proportionately by all the straddle plants. Any imbalances between the NGTL System and downstream pipelines created as a result of pipeline operational problems would be

¹¹² Exhibit 034-05-02, NGTL Information Response to BR-NGTL-7(c)

¹¹³ Transcript Volume 14, pages 1818-1821

corrected by an adjustment in flows during the next gas day. The imbalance between the extraction rights volume banded to a straddle plant and the actual inlet volume processed by the straddle plant, whether caused by pipeline operations or straddle plant operations, would be managed between the straddle plant and the extraction rights sellers. In the event that these parties might not be able to reach agreement in the future, NGTL described that it could provide alternative prorationing approaches for any imbalance resolution.

NGTL suggested that under the NEXT Model, the day-to-day mechanics of extraction rights sales would remain virtually the same as they are today at the Empress/McNeill export point. For example, presently an extraction rights seller is allocated a proportionate share of the gas available to the inlet of the straddle plants. The extraction rights seller then provides a banding instruction to NGTL to direct that volume of gas to one or more of the straddle plants. Extraction rights holders could sell their extraction rights to another party using pooling instructions. This allows shippers with small volumes to aggregate their rights with other sellers. As gas flows to straddle plants often fluctuate from day to day, extraction rights sellers normally provide NGTL with banding instructions that cover a range of expected gas flows. Under the NEXT Model this practice would be extended to include all straddle plants.

NGTL suggested that, unlike with the Current Convention, the NEXT Model would not tie extraction rights to specific delivery points and, therefore, specific straddle plants. Instead, the NEXT Model would provide buyers and sellers of extraction rights with additional flexibility in their purchase and sales strategies by allowing extraction rights holders to sell to any straddle plant. NGTL suggested that the NEXT Model would allow producers to more effectively participate in the extraction rights market.¹¹⁴

Straddle plants would purchase extraction rights from parties holding extraction rights within the pool. The physical implementation of these purchases would be facilitated through banding instructions where the selling party would direct NGTL to direct a volume of gas associated with their extraction rights to the inlet of one or more of the straddle plants on the NGTL System.

NGTL stated that the NEXT Model, by segregating the extraction rights from other activities such as delivery shipments to the border, would allow the extraction rights to be identified. NGTL believed this, in turn, would open up the possible evolution of a transparent and liquid extraction rights market where extraction rights might be traded more often than on an annualized contract basis.¹¹⁵ NGTL noted that under the current system it can be administratively time consuming to get banding and pooling instructions to NGTL, because it is all done by e-mail or fax. NGTL suggested that an electronic system would be developed under the NEXT Model, with the entitlement to extraction rights being transparent and visible on any given day, making it quite easy for an extraction rights holder to dispose of its rights to a willing purchaser.¹¹⁶ NGTL's role in the facilitation of this system and extraction rights market is highlighted by an exchange between NGTL and Board Counsel:¹¹⁷

Q. So for lack of a better word, you're thinking that there will be another NIT system available for extraction rights day one; is that right?

A. MR. MILNE That's right.

¹¹⁴ Exhibit 034-03, NGTL Submission, page 22

¹¹⁵ Transcript Volume 14, page 1828

¹¹⁶ Transcript Volume 14, page 1829

¹¹⁷ Transcript Volume 14, page 1830

Q. And that the cost of that system are included in the \$10 million or less that you've estimated?

A. MR. MILNE That's right, the costs, the NGTL cost to facilitate those transactions, if there was a market behind that, say similar to what developed with NIT, an NGX market, those aren't included. All we want to be able to do is to facilitate that type of market evolving.

NGTL indicated that it considered that there was no reason that the NEXT Model could not facilitate the option of taking NGL in kind as discussed in cross-examination:¹¹⁸

Q. Thank you, sir. Mr. Clark, if you could turn up Board NGTL 16, please. Are you with me, sir?

Q. Sir, in this IR, NGTL discusses the ability for extraction rights holders and straddle plants to potentially contract for the ability to take in kind.

Imperial's and EMC's evidence suggests -- appears to suggest that the ability to take in kind is a critical factor missing from the NEXT model today.

I noted in this IR, and from your discussions and with other counsel last week that the NEXT model does not prevent receipt shippers from contracting with straddle plants to take liquids in kind; correct, sir?

A. MR. CLARK: That's correct.

5.2.1.2 NGTL's Cost Analysis of the NEXT Model

NGTL stated that while all receipt gas quantity and compositional data is currently available using existing equipment, additional measurement equipment would be required to determine the gas available to straddle plants upstream of the A/BC border delivery point. NGTL would also need to enhance existing information systems to consolidate the required NGL quantity and value information and create the necessary reporting format to provide this information to its customers. With respect to costs, NGTL's evidence was as follows:¹¹⁹

The expected implementation cost of \$10 million will be capitalized and would result in an increase to the annual revenue requirement of approximately \$1.5 million. This is a small component of NGTL's annual revenue requirement.

NGTL expected it could administer the NEXT Model without incurring any incremental operating costs.¹²⁰

5.2.1.3 NGTL's NEXT Model Implementation Proposal

NGTL indicated that the NEXT Model could be implemented in approximately 12 to 18 months following direction from the Board.¹²¹ This time period would enable NGTL to upgrade information systems and install additional measurement equipment.

NGTL suggested that the implementation of NEXT should not be impacted by the terms of existing extraction contracts and that no transition compensation should be paid to parties to those contracts as a result of implementation of NEXT.¹²² Such parties should have reasonably anticipated the possibility of changes to the convention after examining the decisions associated with Gulf Strachan, Solex and the NECTF process.

¹¹⁸ Transcript Volume 15, page 1915

¹¹⁹ Exhibit 034-05-02, Response to BR-NGTL-8

¹²⁰ Exhibit 0034-03, NGTL Submission, page 21

¹²¹ Transcript Volume 11, page 1223

¹²² NGTL Argument, page 4-44

5.2.1.4 NGTL's Explanation of the Benefits of Adopting the NEXT Model

NGTL considered that the five Perceived Inequities identified in the NECTF Report and described in Section 1.2.4 reflect two primary underlying problems with the Current Convention, those being:

1. It [Current Convention] does not attribute the value of NGL components contained in the Common Stream to their source. This disconnects a producer's or receipt shipper's NGLs from the value of the Extraction Rights and results in the rich gas/lean gas cross subsidization identified in the NECTF report.
2. It [Current Convention] prevents a producer from pursuing the value of its share of NGLs in the Common Stream unless the producer holds delivery service downstream of a Straddle Plant. If a producer holds delivery service, the value of the Extraction Rights it can claim reflect the composition of the Common Stream, not the producer's gas composition, again resulting in cross subsidization.

NGTL indicated that it believes the Perceived Inequities associated with the Current Convention are real and that the NEXT Model would effectively and efficiently resolve those inequities to a large degree. NGTL suggested that the materiality of those inequities, while a matter of some debate given the reluctance of those opposing a change in the Current Convention to discuss their commercial arrangements, are many millions of dollars a year.¹²³

NGTL's explanation of how the Perceived Inequities would be alleviated by implementing the NEXT Model is summarized as follows.¹²⁴

Inequity 1

Receipt shippers who place dry gas with no NGL content on the system, and who hold export delivery service, get a share of the Common Stream and access to NGL entrained in that stream.

Response

Under the NEXT model only receipt shippers receive extraction rights. Each receipt shipper would be allocated an amount of Extraction Rights reflective of the value of the NGLs contained in their gas receipts. Shippers of gas which contains no NGLs would not receive any extraction rights.

Inequity 2a:

Double Dipping:

Producer-shippers who extract in the field get a share of the NGL in the Common Stream if they also are export shippers

Response

Under the NEXT model, only the NGLs contained in the gas as it is received onto the Alberta System is credited to a shipper, irrespective of the degree to which field NGL extraction has been undertaken.

Inequity 2b

Producer-shippers with production that enters the Alberta System downstream of extraction plants can obtain value for NGLs in the Common Stream, even though their gas cannot be processed physically, if they hold export delivery service.

¹²³ Exhibit 034-18, NGTL Opening Statement, page 1

¹²⁴ Exhibit 034-03, NGTL Submission, pages 19-21

Response

"Down stream" as discussed in the NECTF report can mean two things in regards to access to Straddle Plants.

First, it can refer to gas that is received on a flow path geographically and operationally downstream of Straddle Plants. An example of this situation would be gas received at Coleman, downstream of the Cochrane Straddle Plant which then flows to the Alberta/B.C. border station.

Alternatively, it can mean gas that is received and delivered to a delivery point that may not access extraction facilities. An example of this situation would be gas received at the Kirby receipt point near Cold Lake. Gas from this receipt point is at times delivered to an intra-Alberta market or alternately to Empress.

NGTL has determined that most receipt locations as represented in the above examples generally provide lean gas. Under the NEXT model, shippers at these locations would receive minimal Extraction Rights. Including all of these receipt points would impact NEXT Allocations by less than two percent. For example, the NEXT Allocation of 5.21 percent shown in an earlier example would change by 0.1 percent ($5.21\% \times 2\% = 0.1\%$). Therefore this inequity is not material and does not justify the additional complexity and cost required to address it.

Inequities 3, 4 and 5

Producers who do not hold export delivery service cannot get direct access to the NGL which they put into the gas stream once the NGL are on the NGTL system.

The EUB decision confirms producer rights to NGL; however, the current convention prevents the exercising of those rights if the producer doesn't also hold export delivery service.

Producers are responsible for NGL royalty payments without access to benefits of the NGL value.

Response

The NEXT model would provide extraction rights to receipt shippers who are either producers or parties who have purchased gas from producers. In the latter case, producers would be able to negotiate for the recovery of an appropriate share of the NGL value in the sale of their gas. As a result, producers will have direct access to the value of the NGL they put onto the Alberta System.

NGTL highlighted that the Current Convention places its system at a competitive disadvantage to the Alliance Pipeline which specifically targets natural gas with high levels of entrained NGL for transportation to Chicago. NGTL expressed concerns that if its system is not competitive, it has potential to lose existing throughput as well as incremental throughput arising from Northern Gas and other more local production sources. NGTL identified that reduced throughput on its system would result in higher rates for NGTL shippers noting that each 100 MMcf/d offloaded would increase rates and cost NGTL System shippers between \$6 and \$12 million per year.¹²⁵

NGTL considered that Alaska and Mackenzie gas are expected to have significant quantities of entrained NGL and that a well defined and effective NGL extraction rights model that enables these shippers to access the value of their NGL is essential to attract these volumes to the NGTL System. NGTL suggested that the addition of Northern Gas would increase volumes on the NGTL System by approximately 6 Bcf/d with an associated 220,000 bpd of incremental ethane and 90,000 bpd of incremental propane plus to the NGTL System.¹²⁶

¹²⁵ Exhibit 034-03, NGTL Submission, page 11

¹²⁶ Exhibit 034-03 NGTL Submission, page 12

5.2.1.5 Positions of Parties Respecting NEXT Model

5.2.1.5.1 Producer Access to NGL Value

EnCana supported a change to a receipt point convention and recommended that implementing the NEXT Model would be practical and efficient. EnCana suggested that the associated benefits of implementing NEXT would include resolving the inequities with the Current Convention. It further suggested that the inequities are real in that producers can only obtain energy value for their NGL extracted at straddle plants unless they hold export delivery service.

EnCana considered that implementing the NEXT Model would also enhance competition on the Western Leg of the NGTL System as extraction rights holders could sell those rights to any of the straddle plants, helping to ensure that receipt shippers would receive fair value for their NGL.¹²⁷

ConocoPhillips recommended a change to receipt point contracting and that NEXT should be incorporated into the NGTL tariff on the basis of equity.

Talisman Energy Inc. (Talisman) supported a transition to receipt point contracting and considered that to be consistent with its belief that a producer has ownership of the NGL entrained in the pipeline's Common Stream and should retain those ownership rights, and the corresponding responsibilities, until that ownership has been relinquished through contractual arrangements. Talisman considered that its position is supported by the fact that producers pay royalties on the NGL extracted even though effective control of the liquids has been lost once the producer's gas enters the NGTL Common Stream.

Talisman suggested that the NEXT Model would provide a simple and cost effective approach where producers, or their designates via receipt shippers, would be provided with recognition for their ownership of the NGL in the NGTL Common Stream.

Shell considered that the Current Convention on NGTL is inconsistent with past Board decisions indicating that extraction rights remain with producers. Shell noted that its interpretation of past decisions is that extraction rights remain with producers even after the producer's gas and NGL become comingled in the Common Stream with the gas and NGL of other producers.

Shell suggested that the Current Convention on NGTL is inequitable as it benefits shippers with lean gas. Shell considered that implementation of a receipt point convention such as the NEXT Model would alleviate this inequity. Shell considered that the NEXT Model was more than adequately detailed to support its implementation and noted that after further reviewing the NEXT Model, Shell indicated that it would support NEXT in preference to Shell's own, previously proposed, heating value receipt point alternative.¹²⁸

NOVA Chemicals indicated support for a transition to a receipt point convention as a good starting point, with further evolution incorporating development of a liquid and transparent market for NGL extraction rights being desirable. In this regard, NOVA Chemicals supported implementation of the NEXT Model to commence that evolutionary process as indicated in the following responses by Mr. Mirosh during cross-examination:¹²⁹

Q. Thank you, sir. But in terms of this inquiry, are we to take you in the "support for the NEXT model" column? The "support for the Imperial model"? "Support for no model at this time"?

¹²⁷ Transcript Volume 23, pages 3400-3401

¹²⁸ Shell Final Argument, page 10

¹²⁹ Transcript Volume 18, page 2483

What is your message to us? That there is concerns that have to be addressed before we move forward, or is the message "implement the NEXT model" or something else?

A. MR. MIROSH: Let me try to answer that a bit, Mr. McNulty. I think generally we are supportive of implementing something that will attract more and more gas into the system. We think the receipt point contracting is an important step at this point.

We also think that the NEXT model is certainly a good basis upon which we can proceed with that, but to say I think from the testimony that we've heard over the last week or so and certainly that I've read, I think there are still a lot of unanswered questions relative to the implementation, not only of the mechanistic part of the NEXT model but also how does the market work after the NEXT model is implemented. I think there is some work that has got to be done by industry generally to essentially fill in those blanks.

So to basically say we support the NEXT model without really discussing these other issues I think it's a difficult one for me to say yes or no. We're certainly not against it. We believe that this is at a very important step in proceeding along this area, and we're certainly willing to work with the NEXT model as a basis upon moving forward.

Q. Sir, do I take your comment then that you would not be opposed to a decision as a result of this inquiry that implemented that NEXT model; or are you saying you would not be opposed to a decision implementing the NEXT model conditional upon these other issues being resolved?

A. MR. MIROSH: I think we would like -- certainly we don't see it -- we would like to see certainly a process set forward here which includes the implementation of the NEXT model or some variant of the NEXT model going forward here; but the NEXT model alone I think we'd probably have a little bit of heartburn over that.

Q. Okay. Again, sir, just trying to be clear about where you want the Board to go or you would like to see the Board to go on this, I take it from your last statement, sir, that you would be most happy with a process that identified issues that needed to be discussed and resolved and as that -- and if there was satisfactory process with respect to those issues if the outcome would be the implementation of the NEXT model having taken those other issues into consideration, that's where you would be the happiest?

A. MR. MIROSH: We would be supportive of that kind of a process.

The ADOE considered that NEXT would provide a more liquid and transparent market for NGL extraction. ADOE submitted the chief advantage of the NEXT Model over the Current Convention would be that it unbundles extraction rights from FT-D service and allows receipt shippers, or producers who so contract, to enter into commercial decisions respecting them. In other words, it recognizes that the right of resource ownership should remain with the producer of that resource until the producer (voluntarily) relinquishes that ownership and it achieves the objectives of the Board as enunciated in the Gulf Strachan Decision, page 2 and in the Solex Decision, page 6.¹³⁰

IGCAA supported a receipt point convention methodology that would provide appropriate economic signals, fairness to the resource owners, encourage new gas sources and lead to efficient utilization of the existing infrastructure in Alberta.

Pembina Pipeline considered that the Perceived Inequities associated with the Current Convention had not been quantified and that if the inequities are real, they would only be applicable to 40 percent or less of the NGL extracted within Alberta after considering field extraction and unprocessed volumes.

¹³⁰ ADOE Argument, page 3

After considering common law legal principles of commingling and tenancy in common, Pembina Pipeline did not believe that there is joint ownership of the NGTL Common Stream as the line pack is owned by NGTL and NGTL requires shippers to balance to zero. In this regard, Pembina Pipeline suggested the Board's Solex Decision and Gulf Strachan Decision that considered joint ownership of the NGTL Common Stream, to be in error. EnCana disagreed with Pembina Pipeline's assessment regarding who owns the Common Stream, but considered the ownership of the Common Stream to be not relevant. Instead, EnCana suggested the real issue was who ought to have the extraction rights for the NGL, which is a public interest issue with Board jurisdiction.

In addition, Pembina Pipeline suggested that NEXT would be inconsistent with principles in the Solex Decision and Gulf Strachan Decision because NEXT would allocate NGL on the basis of a value of NGL rather than on the basis of the liquids content that could have been extracted at an upstream deep cut facility. Pembina Pipeline suggested that NEXT was not a component balancing approach and therefore also inconsistent with the Solex Decision and Gulf Strachan Decision.

Pembina Pipeline suggested that changing the convention would change ownership rights from delivery to receipt shippers and would go beyond the Board's jurisdiction with respect to ownership matters between NGTL shippers.¹³¹ In this regard Shell responded to Pembina Pipeline that if it was making this suggestion in the context of this proceeding being an Inquiry, the Board could simply follow its own prior rulings in the Solex Decision and Gulf Strachan Decision.¹³² Shell commented that it considered that Pembina Pipeline was taking an overly legalistic perspective that was not helpful in resolving issues of equity. Shell suggested that the Board could consider ownership issues in its assessment of the economical, orderly and efficient development in the public interest of Alberta's oil and gas resources.

In Section 10 of its Argument, Pembina Pipeline produced a list from the evidence of what it considered to be 13 inequities and 10 concerns with respect to the NEXT Model.¹³³ These related to several topics including intra-Alberta consumption, volumes downstream of straddle plants, prior period adjustments, increased number of parties dealing with extraction arrangements and toll design rebalancing.

ConocoPhillips characterized this Pembina Pipeline list as follows:¹³⁴

Finally, Pembina provides a laundry list of complaints about NEXT and suggests the Board does not have jurisdiction to determine ownership matters. This is nonsense. NGTL's evidence dealt with all possible concerns with NEXT and the Board squarely has jurisdiction over the proper management of Alberta's resources.

Similar to ConocoPhillips, Shell considered that, in general, Pembina Pipeline's submissions should be afforded little or no weight as Pembina Pipeline had not supported its perspectives and had not provided an opportunity for cross-examination of a Pembina Pipeline panel.

IPF and Provident recommended that any decisions reached in this Inquiry should consider the impact on the straddle plants. IPF and Provident did not consider that previous decisions such as

¹³¹ Pembina Argument, page 27

¹³² Shell Reply Argument, page 13

¹³³ Pembina Argument, pages 17-21

¹³⁴ ConocoPhillips Reply Argument, page 6

Solex and Strachan or the NECTF process concluded that a change in the convention methodology was needed.

WEG/Tenaska emphasized that a producer already has three options to obtain the uplift values for its NGL: they may use field extraction; negotiate a price that reflects the uplift value for a sale at NIT; or, take FT-D service and contract directly with the straddle plants.

5.2.1.5.2 Availability and Reliability of Pricing Information for NGL

Shell noted that there is currently no market price available for ethane, but expected that such a market price may be available in the future, and understood that this price could readily be incorporated into NEXT as it may become available.¹³⁵ The SOA also mentioned the lack of a transparent ethane price as a concern with the NEXT Model making the price unrepresentative of the ethane value.¹³⁶ Pembina Pipeline also referenced this concern expressed by the SOA.¹³⁷

5.2.1.5.3 Impact to Delivery Shippers

WEG/Tenaska expressed concern that a shift to NEXT would transfer benefits away from delivery shippers, without compensation. It emphasized that a shipper that holds FT-D service would lose their extraction rights, but gain nothing in return. WEG/Tenaska considered that if the convention were changed to transfer extraction rights from delivery shippers to receipt shippers, then the toll design balance would need to be adjusted accordingly to reflect receipt shippers moving NGL to the straddle plants. In this regard, it stated the following:¹³⁸

Because the current NGL extraction convention is part of the fully integrated NGTL system design, any new convention will inevitably upset the balance. Therefore, WEG would strongly recommend to the Board that any change in the extraction convention should only proceed after the full rate design implications have been examined in a future GRA Phase II process.

NGTL responded to this WEG/Tenaska recommendation as follows:¹³⁹

... WEG/Tenaska's position proceeds from the erroneous assumption that shippers who only have export delivery service have an inherent and legitimate right to the NGLs extracted at the Straddle Plants. Many characterize the allocation of extraction rights to FT-D shippers as a windfall that arose as a matter of historical convenience.

Imperial/EMC disagreed with WEG/Tenaska suggesting that in these circumstances, no compensation is due, and the happenstance that has resulted in export delivery shippers obtaining these values should be reversed because it is just and equitable to do so.¹⁴⁰

WEG/Tenaska cautioned that transferring the convention from delivery to receipt shippers could diminish the incentive to hold delivery service.¹⁴¹

5.2.1.5.4 Gas Contracts and NIT

WEG/Tenaska suggested that a change to a receipt point convention would have implications for standard gas purchase contracts, NGTL tolling and could reduce the supply of NGLs available at the border straddle plants.

¹³⁵ Transcript Volume 17, page 2330

¹³⁶ Transcript Volume 10, page 1015

¹³⁷ Pembina Argument, page 14

¹³⁸ Exhibit 052-03, WEG Information Responses to various parties BR-WEG-2, page 2

¹³⁹ NGTL Reply Argument, page 5-4

¹⁴⁰ Imperial/EMC Argument, page 11

¹⁴¹ Transcript Volume 32, page 5064

WEG/Tenaska submitted that the Board has historically been reticent to interfere with commercial arrangements negotiated by parties. It submitted that the disruption of long-standing commercial arrangements will serve to shake the confidence of parties doing business in Alberta. WEG/Tenaska also argued that moving to NEXT would disrupt the predictability and commercial success of the overall natural gas and NGL business in Alberta provided by the existing extraction convention.

WEG/Tenaska suggested¹⁴² that the ownership of NGL is transferred in a NIT transaction under the terms of industry standard contracts as outlined in the following extract from the transcript where the WEG/Tenaska panel was being cross-examined by counsel for EnCana and referring to the Solex Decision.¹⁴³

Q. The Board then says: "There are, however, two points on the NGTL system when ownership can easily be established at the receipt point when the receipt shipper puts gas on the system and at the delivery point when the delivery shipper takes gas out of the NGTL system." Any quarrel with that?

MR. CAMERON: I would say that's also true at NIT.

Q. You say that ownership can easily be established at NIT?

A. MR. DONAHUE: Yes.

Q. And sorry, where is NIT?

A. MR. CAMERON: It's a notional point that's a commercial point also. So we've got contracts at that point that exchange title. So that exchanges ownership.

Q. And transfers of ownership at NIT occur every minute of every day, right?

A. MR. CAMERON: Yes.

NGTL considered the ownership at NIT to be indeterminate as described in the following exchange with counsel for IPF:¹⁴⁴

A. MR. CLARK: Well, we should probably talk about NIT and what it really is because there seems to be some confusion about that.

When gas comes on to the system, the energy content associated with that gas is added to the receipt shipper's NIT account. That shipper or that account holder can transact with counterparties and transfer that energy inventory to another counterparty, or it can deliver gas off the system and have that quantity of delivered gas, the energy quantity associated with it -- sorry, a quantity of energy removed from the system when it takes delivery and balance its NIT account that way. NIT is not a physical place. It's a commercial hub.

Q. It's notionally anywhere on the NGTL system, isn't it?

A. MR. CLARK: It's strictly a commercial environment, if you will. It's not physically within the pipe. It is an account.

Q. Given the size of the transactions it's my understanding that gas, on average, turns over several times before it leaves your system.

A. MR. CLARK: On average, that's correct.

Q. And it's 4 or 5, is it?

¹⁴² WEG/Tenaska Reply Argument, Section 2.1.4

¹⁴³ Transcript Volume 32, page 5012

¹⁴⁴ Transcript Volume 11, pages 1308-1309

A. MR. CLARK: I think our physical receipts are about 10 bcf a day, and we've seen daily commercial transaction volume in excess of 60 bcf a day. So at a peak level it's probably five or six times.

Q. And I know you're not a lawyer, but here's a question for you, and I don't want a legal answer: Who in your view owns the gas when it reaches the straddle plants at Empress and Cochrane?

A. MR. CLARK: I would say that's indeterminate.

Q. Sorry, I didn't hear that, sir?

A. MR. CLARK: I would say that's indeterminate. What we do know is the receipt shippers have title to the gas at the receipt point and the export shippers have title to the gas once it's delivered to them at the export point. And if gas is delivered to intra-Alberta markets, the intra-Alberta delivery shipper takes delivery of it at the intra-Alberta delivery point.

You talk about who owns the gas within the pipe. Well, actually NGTL owns that gas. It's our linepack. The pipeline physically works on a displacement system. When a molecule of gas comes on to the system, another one pops off at a delivery point. We don't -- there is no real ownership of the gas within the system because frankly the only -- apart from inventory and balances that occur on a day-to-day basis, we own all the gas inside the pipe.

Q. So it's NGTL's gas when it hits the straddle plants?

A. MR. CLARK: I said it's indeterminate. The linepack doesn't move through the system. The system operates on a day-to-day basis. We don't buy linepack, buy and sell linepack on a day-to-day basis. It stays with us.

Shell suggested that the information on the record of this proceeding was that there would be no substantial changes to industry standard contracts arising from a change to receipt point contracting.

Shell also made the following comments on the concept of NIT:¹⁴⁵

The whole idea of NEXT is to create a market for extraction rights to enable producers to realize the value of their NGLs as other than GJs; which is all the NIT market gives to sellers. The problem for producers in realizing value for their NGLs is that NIT is a GJ market. The idea of the NEXT Model is to create a separate market where producers can realize value for their entrained NGLs through the sale of extraction rights. Even assuming the evidence before the Board were other than it is and that sellers in the NIT market actually sell the benefit of NGL extraction, they do not do so willingly, and the Board has recognized that any commercial arrangements for the sale of NGLs must be voluntary.

While the Office of the Utilities Consumer Advocate (UCA) did not take a position respecting an appropriate convention for extraction rights, it considered it important that any change not detrimentally impact the natural gas energy costs or delivery costs to customers.

5.2.1.5.5 Costs

SPG filed cost estimates in its rebuttal evidence¹⁴⁶ outlining that a change to receipt point contracting would result in over \$39 million in one-time costs and over \$103 million in costs that would reoccur every year. The one-time costs listed by the SPG included: NGTL implementation costs; information technology (IT), legal and accounting costs; contract change costs; regulatory costs; and, industry education costs. The on-going costs identified by the SPG included: increased annual operating costs for SPG and other participants; reduced producer revenue; and

¹⁴⁵ Shell Reply Argument, page 20

¹⁴⁶ Exhibit 042-07-01, Straddle Plant Group Rebuttal Evidence, Summary of Costs, page 30

reduced revenues to the extraction industry and petrochemical industry due to increased bypass of NGL. This rebuttal evidence is now no longer sponsored by the SPG and forms part of the Unsupported and Unsponsored Evidence.

SPG also estimated losses, in the \$100 millions, should moving to a receipt point convention impair the Alberta NIT market. The SPG submitted that both NIT liquidity and NIT complexity could be impacted by moving to a receipt point convention. In terms of NIT liquidity, it pointed out that the current straddle plant shrinkage market is approximately one Bcf/d and virtually all of that make-up volume would be removed from the NIT market, impacting the liquidity of the market. The SPG also submitted that if extraction rights are somehow to be included in the NIT market, then it would cause a substantial increase in complexity for the NIT market. SPG suggested that many traders, particularly financial players, utilize the NIT market because of its ease and simplicity. It believed that if, moving to receipt point convention increased the complexity of doing business in Alberta, this would drive traders to other markets and reduce NIT liquidity further. This evidence also forms part of the Unsupported and Unsponsored Evidence.

WEG/Tenaska suggested that, in addition to incurring implementation costs to change the convention, the transfer of extraction rights away from FT-D shippers to FT-R shippers would necessitate substantial changes to the industry standard gas purchasing contract. While WEG/Tenaska did not provide a quantification of the cost, it stated there would be a cost to parties that are "being forced to renegotiate or abrogate purchase/sale, transportation, and extraction agreements."¹⁴⁷

Pembina Pipeline referred to the SPG evidence and agreed that the costs do not take into account "additional collateral negative impacts on the industry, including renegotiation of contracts, bypass of gas and stranding of existing Alberta infrastructure, to name a few."¹⁴⁸

Except as referred to above, the NGTL estimate of \$10 million to implement its proposed NEXT Model was not contested by any other party in the Inquiry.

NGTL stated the cost estimates presented by the SPG were both unrealistic and unsubstantiated. NGTL also submitted that, as is the case today, the requirement for shrinkage make-up gas will continue to exist under the NEXT Model or any receipt point convention and accordingly there should be no impact to the shrinkage gas market. It noted that in the event that gas is stripped within the straddle plants, the energy that is associated with the extracted NGL is removed from the NGTL system and it must be replaced. NGTL stated the provision of shrinkage make-up gas is the obligation of the straddle plant operator and it may acquire make-up through gas purchases or by contracting with other parties, who may or may not be extraction rights holders.

ADOE stated the NEXT Model "appears to be a cost effective and practical system to implement."¹⁴⁹

ConocoPhillips considered that the cost estimate of \$10 million as provided by NGTL for implementation of the NEXT Model was accurate. Conversely, ConocoPhillips suggested the cost estimates provided by SPG, particularly with regard to the items of NIT liquidity and NIT complexity which had been estimated by SPG as potentially exceeding several \$100 million per year, were almost complete conjecture. Instead, ConocoPhillips drew on its experience as a

¹⁴⁷ WEG/Tenaska Written Reply Argument, page 10

¹⁴⁸ Pembina Written Argument, page 23

¹⁴⁹ Alberta Department of Energy, Written Argument, page 1

sizeable daily market player to conclude that there would not be any such impacts with regard to NIT liquidity or complexity.¹⁵⁰

Shell similarly provided a perspective that it was convinced that a change to receipt point contracting would not impact NIT price or liquidity and therefore did not agree with the SPG costs estimated. Shell argued that "there is no probative evidence before the Board that costs to the straddle plants or any other party which would result by reason of implementation of the NEXT Model or another receipt-point contracting proposal, would be other than minimal."¹⁵¹

EnCana considered that the costs to implement NEXT would consist of IT costs as well as metering costs.¹⁵² EnCana disagreed with the SPG cost estimates as follows:

- the NEXT model will not change current NGL extraction operating procedures; the only difference will be in the names of the counterparties on the contracts that the straddle plants negotiate for extraction rights;¹⁵³
- there are differences of opinion about whether the value of NGL extraction rights is captured in the NIT price; irrespective, it would be impossible to ever determine if, or by how much, the NIT price would be impacted by a transfer of extraction rights to receipt shippers;¹⁵⁴
- there is no reason to expect increased bypass of the straddle plants; both receipt shippers and straddle plants will continue to have the financial incentive to ensure that all the gas is reprocessed;¹⁵⁵
- there will be no need to change industry standard contracts; this is illustrated by the fact that the same purchase and sale contracts that are used by buyers and sellers on NGTL are also used on ATCO Pipelines and Alliance even though those pipelines have different NGL extraction rules;¹⁵⁶
- a receipt point convention will not reduce NIT liquidity; the supply of and demand for gas on the NGTL system should remain the same regardless of who contracts to provide the shrinkage;¹⁵⁷
- a receipt point convention will not increase NIT complexity; it will, though, give impetus to the development of a market for trading NGL extraction rights;¹⁵⁸ and
- regulatory costs are, at this stage of the Inquiry, largely sunk costs; any necessary industry education should be available via the NGTL Tolls, Tariff, Facilities and Procedures Committee.

¹⁵⁰ Transcript Volume 15, page 2010

¹⁵¹ Shell Written Argument, page 24

¹⁵² NGTL provided a breakdown of the \$10 million cost estimate in Exhibit 053-34 as \$3.5-5 million for IT costs and \$2.2-3 million for measurement

¹⁵³ Transcript Volume 2, page 183, Transcript Volume 15, pages 1983-1894, and Transcript Volume 17, page 2277. Moreover, even if the straddle plants did incur some additional costs to accommodate receipt point contracting, they would endeavor to recover those costs in the extraction premiums negotiated with receipt shippers.

¹⁵⁴ Transcript Volume 2, page 183-185, Transcript Volume 17, pages 2283-2284, and Transcript Volume 21, page 2997

¹⁵⁵ Transcript Volume 15, page 1894, Transcript Volume 21, page 2997

¹⁵⁶ Transcript Volume 2, pages 180-181, Transcript Volume 16, pages 2025-2026

¹⁵⁷ Transcript Volume 2, page 187. Moreover, even if 1Bcf/d were to be traded outside the NIT market, that should not affect the price of gas in Alberta, as demonstrated by the discussion at Transcript Volume 24, pages 3607/14 and 3613/16

¹⁵⁸ Transcript Volume 2, page 189

IGCAA submitted that, "with respect to the cost of implementing a model such as the NEXT Model proposed by NGTL, IGCAA continues to believe that the costs are small and the benefits large and well distributed amongst shippers."¹⁵⁹

Imperial/EMC stated "the costs of implementing the receipt point measurement aspect of a new system are likely to be small, as demonstrated by the estimate of NGTL of a mere \$10 million dollars to implement a receipt point monitoring system."¹⁶⁰ Imperial/EMC addressed the potential for an impact on NIT in its written Argument. It submitted that arguments that changing to a receipt point convention would impact NIT liquidity and complexity had no basis in fact and that "the discussion of these purported costs was completely speculative."¹⁶¹

Parties such as ConocoPhillips, Imperial/EMC, and NOVA Chemicals recognized that some incremental costs, such as re-negotiating contracts, would be incurred. However, it was their position that these additional costs are, in essence, the costs of doing business, and parties will seek to pass on such costs to their counter-parties through secondary means such as the marketplace or other commercial arrangements.¹⁶²

5.2.1.5.6 Impact on NGTL Throughput

NGTL stated it believed that a receipt point convention, in particular its proposed NEXT Model, would increase the throughput on the NGTL System, better utilizing existing infrastructure in Alberta. In turn, it argued that this would increase the quantity of NGL available for extraction and value added upgrading within Alberta. It also argued that increased throughput would also result in reduced NGTL System rates.

NOVA Chemicals argued that a receipt point convention would give receipt shippers incremental revenue, which would make NGL extraction and transportation on the NGTL System more attractive to receipt shippers. It submitted that this would bring more gas to the NGTL System and would result in increased NGL available for extraction at the straddle plants.

ADOE submitted that allowing receipt shippers to monetize their NGL under a receipt point convention would encourage shippers upstream to utilize the NGTL System and the extraction infrastructure in Alberta, which should in turn provide the petrochemical industry with additional feedstock.

IGCAA expressed the position that a receipt point convention would provide the appropriate economic signals and fairness to the resource owner and that this would encourage the connection of new gas sources, and lead to efficient utilization of the existing infrastructure. It suggested this would result in additional NGL volumes being made available for value added upgrading within Alberta.

Talisman agreed that a receipt point convention would provide better market signals and suggested this would factor into a determination of the necessity for upstream extraction facilities.¹⁶³

Shell noted that allocating the extraction rights to the receipt shipper would impact decisions to invest in new field NGL extraction capacity. It argued that receiving the value for extraction

¹⁵⁹ IGCAA Written Argument, page 2

¹⁶⁰ Imperial/EMC Written Argument, page 10

¹⁶¹ Imperial/EMC Written Argument, page 12

¹⁶² ConocoPhillips Written Argument, page 13 and, NOVA Chemicals, Written Reply Argument, page 9

¹⁶³ Talisman Argument, page 1

rights for NGL entrained in the gas will reduce the economic return associated with investing capital to build new field extraction capacity relative to leaving the NGL in the natural gas stream.¹⁶⁴ As a result, it believed that producers may decide in favour of transportation on NGTL and extraction at existing straddle facilities, resulting in increased throughput on currently under-utilized facilities. Shell commented that there was no evidence on the record to suggest that moving to a receipt point convention would create a disincentive reducing the volumes of gas flowing to the borders.¹⁶⁵

WEG/Tenaska expressed the view that maintaining the existing convention would tend to minimize proliferation of NGL facilities, as further proliferation would be more likely to occur if extraction rights are transferred upstream. It suggested that the extraction revenues associated with FT-D service on NGTL provide a modest incentive to move Common Stream volumes to the straddle plants where NGL extraction is most viable. As a result, changing to a receipt point convention would create a disincentive to moving gas to the provincial borders. WEG/Tenaska argued that less gas delivered at the borders will result in lower volumes of NGL extracted by the straddle plants and less product available to the petrochemical industry in Alberta.

SPG submitted that allocating extraction rights to receipt shippers will also allocate additional costs to administer the extraction rights. It noted that some of the smaller receipt shippers likely will not spend the money necessary to obtain its share of extraction rights because the potential return is too low. It is also conceivable, the SPG suggested, that the producer may receive nothing after all the administrative costs are covered by the receipt shipper. If the small receipt shippers prove to be indifferent to the value received for extraction rights, given the offsetting cost, the SPG argued that this would lead to increased gas volumes bypassing the straddle plants and, in turn, lost NGL production. This evidence was part of the Unsupported and Unsponsored Evidence.

Pembina Pipeline submitted that moving to a receipt point convention such as the NEXT Model creates the risk of stranding field facilities and all facilities connected to the field facilities upstream of the NGTL system. It was Pembina Pipeline's view that maximizing the utilization of all existing infrastructure, including infrastructure associated with field extraction, is in the public interest and must be factored into any public interest determination.

5.2.1.5.7 Contracts with Extraction Plants

The Amended SPG cautioned that imposing any new rules and regulations on the NGTL Common Stream, the lifeblood of their industry, may affect the future viability of the industry. It also emphasized that with the significant challenges now confronting the extraction industry, additional uncertainty and cost must be avoided. The Amended SPG pointed to the importance of having arrangements which permit the straddle plants to take title to the gas from parties who have caused it to be delivered to the point of extraction and who are able to assure legal title to that gas at the point where it is severed from the NGTL Common Stream. It suggested that this exists under the Current Convention, whereas it would not exist under a receipt point convention.

The SPG in its Unsupported and Unsponsored evidence cautioned that the substantial number of long term contracts that exist would mean that there would certainly be considerable transitional difficulties and costs arising from a change in the extraction convention. The SPG noted that about 46 percent of the volumes contracted were subject to short-term contracts in 2006, with the remainder of volumes roughly equally split (about 23 percent each) between medium-term and

¹⁶⁴ Shell Argument, page 11

¹⁶⁵ Shell Reply Argument, page 20

long-term contracts.¹⁶⁶ The SPG was unwilling to provide a further breakdown of contract terms as it considered the information confidential, commercially sensitive, and competitive information.¹⁶⁷

5.2.1.5.8 Regulatory Agency

The Amended SPG considered that NGTL is a federal work whose affairs are subject to a broader, national perspective.¹⁶⁸ WEG/Tenaska considered that given a regulatory change any Board recommendations related to NGTL would become inappropriate. Further in this regard, WEG/Tenaska recommended that any change in convention would have to be considered from a perspective consistent with the national public interest. Imperial/EMC disagreed with WEG/Tenaska's position respecting implementation of a change in the potential environment of a transition to federal regulation of NGTL. Imperial/EMC considered that the Board should proceed with appropriate recommendations consistent with the Final Scoping Document issued by the Board. Many other parties supported this view as noted in the Board's ruling of August 15, 2008 discussed in Appendix 5 on the Motion and Notice of Question of Constitutional Law from the Amended SPG.¹⁶⁹

5.2.1.5.9 Value to Producers versus Receipt Shippers

WEG/Tenaska noted that only one in six producers holds firm receipt service¹⁷⁰ on NGTL and considered that as a result, changing to a receipt convention would only shift the issue upstream, but not alleviate it. WEG/Tenaska pointed out that the proposed NEXT Model has no mechanism to ensure that the NGL value obtained through the transfer of rights will find its way back to the majority of producers who do not hold FT-R service. WEG/Tenaska did not agree with NGTL that the small producers would be able to effectively negotiate with NGTL receipt shippers to obtain fair NGL value.

Shell indicated that it considered a switch to a receipt point contracting methodology would likely result in the full or a significant portion of extraction rights finding its way to the producers as long as the market for extraction rights functioned in an effective manner.¹⁷¹ Shell further clarified that if the market did not function effectively, producers would be unlikely to receive fair value for their NGL even if they became receipt shippers. Shell considered that the NEXT Model would create a liquid market as indicated during cross examination by Board Counsel:¹⁷²

Q. Certainly, sir. Is a transparent and liquid NGTL market as reflected in your comment in your opening statement, is it necessary to ensure producers receive the right price signal to obtain a fair value for their extraction rights?

A. MR. NICKS: Just a point of clarification. You said "NGTL markets." Did you mean "NGTL markets" or "NGL markets"?

Q. You caught me again, sir. Thank you. I was hoping Mr. Baker would catch that one.

¹⁶⁶ Exhibit 042-02-03, Straddle Plant Group - Issues Regarding the Distribution of Benefits from NGL Extraction in Alberta by Wright Mansell Research Ltd. - Aug 28, 07, page 20

¹⁶⁷ Exhibit 042-06, SPG Response to Shell Motion for Better Responses to Certain IRs, page 3

¹⁶⁸ Amended SPG Argument, page 2

¹⁶⁹ Exhibit 001-42, Board Ruling on Constitutional Motion, page 4

¹⁷⁰ Transcript Volume 12, page 1483

¹⁷¹ Shell Argument, page 18

¹⁷² Transcript Volume 17, page 2345

A. MR. MACDONALD: We believe that the NEXT model will result in competition at the receipt point for those extraction rights and that that is going to send the right price signals to the producers and receipt shippers and that they will be able to realize the real value for their extraction rights.

Q. And that that would be sufficient enough to create a liquid market?

A. MR. MACDONALD: We believe that that creates liquid market when you have competition at the receipt point for those rights. Now, will it become transparent? That's an evolutionary thing. If it moves into an environment similar to, you know, an electronic trading or something like that, but that's -- but we do believe that it will be competitive.

5.2.1.5.10 Transition Timing and Potential Compensation

NGTL, ConocoPhillips and EnCana recommended NEXT implementation effective November 1, 2010.

The ADOE concurred with NGTL that an 18 month transition period would be appropriate. In this regard the ADOE noted that over 75 percent of contracts had less than a four year term, and the SPG had declined to advise how many contracts had a five year term or less.

With regard to compensation, the ADOE indicated that it was not convinced any compensation was appropriate. Evidence was advanced that it was the export delivery shippers who had to warrant title to the straddle plant owners.¹⁷³ The ADOE reasoned that if a change to the extraction convention were implemented through a tariff change on NGTL, the export delivery shippers' ability to guarantee title would be frustrated and no liability would arise for the straddle plants. Further, with the ability to contract for extraction with receipt shippers, the straddle plants should not be harmed. The ADOE noted that WEG/Tenaska had suggested that it should be compensated through a rate design and toll change for loss of extraction premiums. ADOE submitted it would be wrong to do so. The evidence is that the extraction premiums were used to reduce their total acquired cost of gas.¹⁷⁴ ADOE commented that all of the SPG experts¹⁷⁵ and Tenaska¹⁷⁶ suggested that if the extraction rights were moved to receipt shippers, NIT price should decrease, although it may take some time for it to come into balance; accordingly export shippers should not be significantly impacted by the loss of extraction premiums.¹⁷⁷

NOVA Chemicals suggested that regulatory oversight and reporting should be incorporated into the transition process, which it considered ought to be of three-year duration¹⁷⁸ with implementation November 1, 2011. NOVA Chemicals suggested this transition term would provide a form of compensation for delivery shippers who currently have extraction rights under the Current Convention.

Shell suggested a three-year transition period with no compensation to delivery shippers in association with the change.

5.2.1.5.11 Next Steps in the Event Board Recommends Adoption of NEXT Model

NGTL recommended that the NEXT proposal be implemented as soon as reasonably possible and proposed November 1, 2010.¹⁷⁹ NGTL also recommended amendments to its tariff should be

¹⁷³ ADOE Argument, page 4

¹⁷⁴ Exhibit 052-03, WEG response to ADOE information request 1(e)

¹⁷⁵ Transcript Volume 24, pages 3472-3476

¹⁷⁶ Exhibit 048-03-01, Tenaska response to ADOE

¹⁷⁷ ADOE Argument, page 4

¹⁷⁸ NOVA Chemicals Argument, page 9

¹⁷⁹ Transcript Volume 14, page 1761

completed.¹⁸⁰ NOVA Chemicals suggested that the appropriate outcome for the Inquiry was for the Board to make recommendations for changes to the Government of Alberta.

Shell proposed that the Board should recommend to both the Alberta Government and the AUC that a receipt point convention of the nature of NGTL's NEXT Model be implemented for all provincially regulated pipelines and the straddle plants on those systems. Shell suggested that the Board should direct ATCO Pipelines to meet with its shippers to discuss implementation of a model similar to NEXT on its system. In this regard, Shell noted that the existence of the present ATCO Pipelines' Terms and Conditions transferring extraction rights to ATCO Pipelines should not preclude updating those Terms and Conditions.

5.2.2 Imperial/EMC Model

Imperial/EMC proposed a Comprehensive Component Metering model (CCM Model) that it contended would attribute NGL to receipt shippers in an accurate manner. In doing so, it expressed concern that under the Current Convention producers/receipt shippers are restricted from entering commercial contracts regarding their NGL unless they also become extractors in their own right or export delivery shippers even if this was otherwise not in their business interest to do so. Further, there is currently no mechanism by which a producer/receipt shipper selling at NIT can deal separately and transparently with gas and NGL as distinct rights. Thus Imperial/EMC considered that producers/receipt shippers must currently sell their gas without clear, separate, and measurable compensation for the rights to the entrained NGL.

Imperial/EMC submitted that the inequities associated with the Current Convention are not "perceived" inequities at all; they are quite real. Imperial/EMC suggested that the best way to honour the producers' property rights is to foster a system whereby the profits inherent in NGL are subject to direct dealings between the NGL owner, that being a producer, and an arm's length party interested in bargaining for the right to extract or purchase NGL.

Imperial/EMC suggested that the Current Convention cuts the producer, who is not an export delivery shipper, out of the bargaining process for NGL notwithstanding that the royalties for NGL are charged to the producer based upon component-specific reference prices. During cross-examination by counsel for the ADOE, Imperial/EMC modified its position with respect to the extent of the royalty inequity as follows:¹⁸¹

Q. Thank you, sir. Would you disagree with me that in essence both responses, that's the ADOE response and the SPG response, generally reflect that royalty on the ISC components is actually paid on the gas reference price and adjusted for a transportation differential; in other words, it is not paid on the spec price?

A. MR. MOORE: I don't have the ADOE answer in front of me, but based on the SPG answer, that's what I say.

Q. And subject to check, sir, I assure you the ADOE says similar.

A. MR. MOORE: I accept that, Ms. Page.

Q. Thank you. So have we made one perceived inequity disappear?

A. DR. SAFIR: I would certainly say that, you know, I would revise my opinion in terms of the degree of inequity based on that information.

¹⁸⁰ Transcript Volume 14, page 1878

¹⁸¹ Transcript Volume 20, pages 2870-2871

Imperial/EMC submitted that there are three keys to the inequity of the Current Convention:¹⁸²

- There is no recognition of the composition of gas (whether lean or rich gas) individual producers deliver onto the NGTL system, because entitlement to the Common Stream is not presently determined on a component basis.
- Producers that only hold receipt capacity, and sell their gas at NIT at its heating value without the ability to directly dispose of their NGL components, have no opportunity to benefit from the uplift value of their NGL.
- Since 2002, the Alberta government has assessed royalties payable by producers based on a liquids reference price specific to each of the in-stream components.

Imperial/EMC suggested that there must be alignment with the Alberta NGL royalty reference prices to ensure that there is no disconnect between the prices generally achievable in the market and the royalty rates charged. In this regard, the royalty payor should have the full opportunity to obtain value for the products on which the royalty is paid, particularly where the royalty is calculated with reference to market prices.

5.2.2.1 Imperial/EMC's Operational Concept of CCM Model

Imperial/EMC proposed moving from the Current Convention to an NGL extraction convention that measures NGL at each receipt point on the NGTL system and allocates rights to the receipt shipper. Absent receipt point measurement and allocation to each shipper, there is no identification of the NGL components each producer or receipt shipper delivers onto the NGTL system. Imperial/EMC considered that without this measurement, producers and receipt shippers are unable to deal separately and transparently with the NGL entrained in their gas streams.

The CCM Model would allocate extraction rights based on the components delivered into the pipeline system. Imperial/EMC characterized the CCM Model as follows:¹⁸³

Given this is an inquiry, Imperial and EMC proposed a conceptual model that allocates extraction rights based on the components delivered into the system with each producer/receipt shipper receiving its respective proportionate share of the components actually recovered and delivered at the straddle plant outlets. It is fully recognized it is not a detailed model.

Imperial/EMC explained that further development and cooperation including the straddle plants would be required to implement the CCM Model as follows:¹⁸⁴

The Imperial/EMC proposal takes a critical extra step and incorporates the straddle plants into its proposal by extending it to the straddle plant outlets. The details, costs and implementation of this additional structure requires work with the Straddle Plant Group, which at present remains unwilling to move forward with change absent direction from this Board.

Many issues, such as liquids recovery and any required balancing on commercial terms, require input from the straddle plants. Imperial and EMC believe their concept is well-founded and could be implemented in a cost and operationally efficient manner. Essentially, it is NEXT plus. It builds on the NEXT model for upstream allocation and adds the straddle plants to achieve the most efficient functioning marketplace.

¹⁸² Exhibit 016-03, Imperial/EMC Submission, pages 10-11

¹⁸³ Transcript Volume 19, page 2606

¹⁸⁴ Transcript Volume 19, page 2607

Imperial/EMC pointed out that this was not a recommendation for "component tracking" throughout the NGTL System, but simply a replacement of heat content measurement with component measurement at the receipt point.

The proportionate share for each producer/receipt shipper would be determined on the basis of the percentage of each NGL component at the receipt points onto NGTL in relation to the actual NGL recovered at the outlet of the straddle plants. Imperial/EMC contrasted the CCM Model with the NEXT Model suggesting that NEXT endeavors to ascertain the market value of the liquids through a proxy mechanism. The NEXT Model does not include the straddle plants within the mechanics of the model and essentially stops at the inlet to the straddle plants leaving all parties to negotiate with straddle plants.¹⁸⁵ Imperial/EMC suggested that there was potential for the actual market prices in comparison to the proxy reference prices associated with the NEXT Model to be quite different. Imperial/EMC considered that producers/receipt shippers could achieve compensation for their NGL at prices closer to market prices under its proposal. Imperial/EMC summarized the differences between the CCM and NEXT Models as follows:¹⁸⁶

A. MR. MOORE: I think, Mr. McNulty, if -- I think the key difference between the two models is really our view of the efficiency of the marketplace at the end of the day.

If -- in the NEXT model, if the -- as I have learned from the cross-examination from Ms. Page, for example, we don't have the product reference prices that are published are not necessarily the market prices, they are a proxy on a GJ equivalent basis, that doesn't actually reflect the real marketplace. So it is a bit of a proxy for the value but it isn't the actual marketplace itself. So in that respect, it doesn't quite meet the market but it does it in a proxy fashion.

Other than that, it doesn't really take into consideration the bringing the straddle plants into the convention and bringing them in is an integral part of the process and convention so that we could all ultimately have a -- the ultimate market test to take in kind with recourse. But I think the rest of it from upstream of the inlet to the straddle plants, it's essentially the same.

Imperial/EMC advocated a transparent, efficient and competitive marketplace for NGL extraction rights. To facilitate the development of such a market, Imperial/EMC suggested the following two critical elements would be required as referenced in the Imperial /EMC opening statement:¹⁸⁷

First, Imperial and EMC believe producers must have the right to take their liquids in kind at a reasonable fee at the straddle plant outlets. This encourages arm's-length negotiations for NGL extraction right values. Should producers/receipt shippers be unable to negotiate a reasonable fee for service, there must be recourse to the regulator. The option to have a straddle plant declared a common processor is a necessary adjunct to take in kind rights. Such proceedings would likely be rare, however, their mere existence would greatly enhance the fairness and success of the negotiations over NGL extraction rights.

Second, Imperial and EMC believe that the Board should not, in this inquiry, make directions which preclude or hinder the development of other extraction facilities on the NGTL system. The potential for additional facilities is a commercial alternative that contributes to the development of an efficient and competitive marketplace. The ability to build new straddle plants upstream of the border plants, or elsewhere in Alberta, is a

¹⁸⁵ Transcript Volume 20, pages 2909-2910 and 2921

¹⁸⁶ Transcript Volume 20, page 2921

¹⁸⁷ Transcript Volume 19, page 2608

critical component of that market development. Any application for new extraction facilities should be evaluated on its own individual merits.

Imperial/EMC suggested that the owner of the extraction rights must be free to make a contract to realize the value of its rights in the NGL to the fullest extent commercially possible. It was Imperial/EMC's view that the possibility of a system similar to NIT should be investigated in order to ensure that the value of the components can be tracked for commercial purposes.

Imperial /EMC suggested that with the development of a transparent extraction rights market, those producers who choose not to hold receipt capacity will be in a position to negotiate directly with a receipt shipper over the value of their entrained liquids.¹⁸⁸

While Imperial/EMC considered that the change to a receipt point convention was foremost an equity issue, it confirmed its perspective that making changes that give producers/receipt shippers the opportunity to capture uplift value associated with entrained NGL makes the NGTL System more attractive for the transportation of liquids-rich Alaska gas.

Imperial/EMC also considered that a shift in extraction rights combined with transparent pricing will encourage greater resource recovery by sending the appropriate price signals to producers regarding the full value of their upstream resources.¹⁸⁹

Imperial/EMC considered that the details for implementation of their model could be established over a time period of approximately 18 months¹⁹⁰ subsequent to approval of the transition to a receipt convention.

Imperial/EMC viewed the NEXT Model as a "critical first step"¹⁹¹ in moving to a receipt point convention, but considered that an additional step would be required to facilitate the creation of a more equitable, transparent and efficient extraction rights market. Imperial/EMC suggested that the NEXT Model has all the required details to effect measurement and allocation of components at the receipt point for the CCM Model. The Imperial/EMC proposal incorporates the straddle plants by extending the CCM Model to the straddle plant outlets. Imperial/EMC considered that further development of the details, costs and implementation of this additional structure would require work with the straddle plants, which Imperial/EMC indicated had been unwilling to move forward with change absent direction from the Board.

Imperial/EMC noted that under its proposed convention, the receipt shippers would have the right to either sell their extraction rights to a delivery shipper or to retain those extraction rights enter into an extraction contract with one of the straddle plants, have the gas stripped and negotiate for the products themselves. It stated that with its proposal, parties with extraction rights could negotiate with any particular straddle plant they wished, thereby facilitating competition between the straddle plants.¹⁹² The delivery shippers could still remain in the NGL business, if they desired to do so, but they would have to negotiate for the value of the extraction rights.

Imperial/EMC indicated a desire to have a recourse option available for straddle plants to be declared common processors by the Board if negotiations for value sharing between producers and straddle plants were not considered successful.

¹⁸⁸ Transcript Volume 19, page 2605

¹⁸⁹ Exhibit 016-06-01, Imperial/EMC Rebuttal Evidence, page 3

¹⁹⁰ Transcript Volume 20, page 2899

¹⁹¹ Transcript Volume 19, page 2606

¹⁹² Transcript Volume 20, page 2934

Imperial/EMC noted that because this process was an inquiry, no specific application was before the Board for approval. Consequently, direction by the Board to the industry to shift to a receipt point convention is critical. Imperial/EMC suggested that direction must be very specific as to the principles which must underlie an equitable allocation methodology.

Imperial recommended the following implementation action in response to cross examination by Board Counsel:¹⁹³

Q. Okay, thank you, sir.

So having gone through this discussion this morning and yesterday, can you take a moment and address specifically what you'd like a Board decision to do in respect of a change in an extraction convention, the process to work out the details of implementation, common processor issues, and the right to take in kind?

A. MR. MOORE: Would you give us a moment, Mr. McNulty, please.

Thank you, Mr. McNulty and members of the panel. I think as we said in our opening statement, we don't have all the answers on this. We have -- certainly on the receipt side of the system, we have piggybacked on the NGTL NEXT system to basically take care of those bits and pieces.

We will require some time and effort to work with the straddle plants to implement the second part of our proposal. So we would actively be seeking that the Board adopt and recommend that our proposal be implemented and that that proposal would require a backstop, which would be the recourse, and to either rule on that or to make the respective recommendations they feel would be necessary in order to bring that to pass.

We do believe this is the most equitable. We think the Board's decision would have to be succinctly clear that this is the way that the Board would like the industry to go, so that would assist us greatly in working with the straddle plants to effect the CCM model.

We would see that -- still think that that could be done within an 18-month period, but I think, as you asked me yesterday, Mr. McNulty, if we had to take longer to get the right answer, we would very much be prepared to do that. At the end of the day, we want the right answer as opposed to the expedient answer.

And I think at the end of that, before implementing it, if there was -- if there were aspects of that implementation that required the Board's approval, that it would come back to the Board for that. But to the extent that the rest of the process was going to be managed through commercial negotiations, be it balancing agreements or what have you, there could be a report to the Board but there wouldn't necessarily be a role for the Board in those aspects.

That's kind of a high-level summary, and if you have any other questions, we'll try and respond.

5.2.2.2 Imperial/EMC's Cost Analysis of CCM Model

Imperial considered that the cost estimate of \$10 million as provided by NGTL for the NEXT Model would be applicable to the receipt portion of the CCM model. It also noted that the CCM Model would have additional costs which are yet to be identified, that would result from changes needed to incorporate CCM into the straddle plant business systems.¹⁹⁴

¹⁹³ Transcript Volume 21, pages 2984-2986

¹⁹⁴ Transcript Volume 21, page 2995

Imperial/EMC disagreed with the submission of the SPG that the costs to implement a receipt point convention could potentially be in the hundreds of millions of dollars. Imperial/EMC considered that the costs offered by SPG had no backup or foundation and were completely speculative. Imperial/EMC considered that the experience-backed views offered by NGTL and ConocoPhillips, disagreeing with the SPG cost estimates, were more reliable.¹⁹⁵

5.2.2.3 Imperial/EMC's CCM Model Implementation Proposal

Imperial /EMC suggested that a reasonable transition period that would allow for the lapse of short term extraction contracts and the renegotiation of longer term extraction contracts would likely be required as follows:¹⁹⁶

Now maybe we need a year or a bit more to work through that with the straddle plants; we'd come back and say here's the result of that effort, put it in place, allow for an appropriate transition period, which I think has ranged from about a year and a half to three years, here in the hearing, and that gives you some time to kind of fine tune it. But I think we need to get past the concept of the detailed piece; but to do that, we are going to need to sit down and work with the straddle plants. How long that will take, I don't know.

However, Imperial/EMC noted that those parties with existing extraction contracts had not provided sufficient detail regarding their arrangements to allow a full assessment of those matters. Further, given the ongoing Inquiry, Imperial/EMC indicated a belief that henceforth all extraction arrangements should be negotiated on the basis that a new convention might be implemented.

Imperial/EMC referenced in cross-examination by counsel for the SPG that industry participants were aware of potential changes in extraction arrangements as follows:¹⁹⁷

Q. Mr. Moore, when you started that long response you just gave me, you took us back to the days of the aggregators. You're aware, I'm assuming, that there has been substantial investment in straddle plants in this province throughout the last 30, 40, 50 years; right?

A. MR. MOORE: I would understand that there has. A lot of that, as I understand it, was made prior to deregulation, and there has been some recent investments made since then. I think some as recent as 2005, which I would observe was post the Solex decision and post the knowledge in the industry that change was possibly afoot.

Imperial/EMC considered that there should be no compensation to export shippers with regard to the transition from a delivery point to a receipt point convention. Imperial/EMC suggested the change would be righting a wrong and that any form of compensation to delivery shippers would be "highly perverse".¹⁹⁸

Imperial/EMC suggested that the CCM model should be extended to ATCO Pipelines and AltaGas Utilities, although it could be implemented subsequent to implementation on NGTL.¹⁹⁹

5.2.2.4 Positions of Parties Respecting the CCM Model

NGTL noted that Imperial/EMC supported the receipt point concepts associated with the NEXT Model. However, NGTL considered the CCM Model to be inferior to the NEXT Model given the lack of detail provided on how the CCM Model would work.

¹⁹⁵ Imperial/EMC Argument, page 11

¹⁹⁶ Transcript Volume 20, page 2892

¹⁹⁷ Transcript Volume 19, page 2671

¹⁹⁸ Imperial/EMC Reply Argument, page 16

¹⁹⁹ Transcript Volume 21, page 3018

Shell indicated that while it considered that the CCM model was clearly preferable to the status quo Current Convention, it did not support the CCM model as it was not adequately detailed to allow adoption.

The Inquiry Expert commented on the CCM Model as follows:²⁰⁰

Imperial/EMC's model proposes component tracking similar to the NEXT model, and proposes that parties have the right to take their products in kind. In addition to the "take-in-kind" option, Ziff Energy's interpretation of Imperial/EMC's evidence is that extraction rights would be based solely on allocated components. Receipt shippers with those allocated components would negotiate with the straddle plant operators with respect to custom processing/take in kind arrangements, or outright sale of those components to the straddle plant operators. In either case, the difficulty here is that the components determined at the receipt point are not the same as the component mix and total components at the inlet of the straddle plants, so an allocation mechanism would be required.

Ziff Energy understands that allocations similar to this are done at some field plants, where gas stream components are determined at the wellhead, and components extracted at the plant are allocated to the working interest partners in the wells and plant. In this case, 100% of the gas and entrained components from the wells is processed at a single plant. On NGTL, only a portion of the receipt gas is processed at straddle plants and there are six plants, so implementing Imperial/EMC's proposal would be more challenging. If for example, receipt shippers are allocated 100 units each of ethane, propane, butane, and pentanes plus, and the six straddle plants remove an aggregate of 50 units of ethane, 80 of propane, 85 of butane, and 88 of pentanes plus, how does one allocate this among numerous parties at each of the plants? It appears an allocation mechanism would need to be developed and implemented at the straddle plants to accommodate this proposal.

With respect to the option to "take-in-kind", Ziff Energy believes this right could also be implemented under the first two models, with take-in-kind rights based on a proportionate share of the straddle plant NGL output (a party who has 10% of extraction rights at a straddle plant would be allocated 10% of liquids produced). Ziff Energy notes Imperial/EMC's suggestion that the Board should have an oversight role in the setting of extraction fees in response to a complaint, and that the Board should clarify that the straddle plants are subject to being declared common processors for extracting products on a fee for service basis. Given the small number of straddle plants, Ziff Energy believes that Imperial/EMC's "take-in-kind" suggestion may be a reasonable approach.

5.2.3 Shell Heating Value Allocation Model

Shell initially proposed moving from the Current Convention to a receipt point convention using heating values of the gas at the receipt points as an allocation methodology. However, it subsequently withdrew its support for that heating value model in support of the NEXT Model.

Prior to Shell's withdrawal of its model, Keyera had indicated directional support for the simplicity of that model that did not require tracking of components. Keyera considered that the Shell model could be modified to incorporate a simpler equalization methodology, such as used in crude/condensate equalization.²⁰¹

²⁰⁰ Exhibit 04904-01, Ziff Energy Inquiry Expert Submission, page 7-21

²⁰¹ Exhibit 031-04-02, Keyera Information Response KEP3

5.2.4 Gas Equalization Model

The NECTF Report discussed an alternative to the existing extraction convention based on the equalization process currently employed in Alberta in the crude oil and condensate industries. The Gas Equalization Model would modify rather than replace the Current Convention by providing some compensation to receipt shippers with rich gas from shippers with lean gas. This compensation would be based on the quality of gas contributed at the receipt point to the Common Stream. Scaled factors for the components would be used to increase or decrease compensation based on the Common Stream price.

5.2.4.1 Operational Concept of the Gas Equalization Model

The operation of this alternative would be modeled on the existing program used for crude oil and condensate which is coordinated through CAPP with an industry committee maintaining the scaled factors and with pipeline operators providing administration.

The NECTF Report described the Equalization Model as follows:²⁰²

Under this alternative, NGL extraction value is presumed to be included in the intra-Alberta sales (NIT) price. Equalization would require shippers of lean gas to transfer a portion of their revenues from the sale of that gas to shippers of richer gas. This alternative builds on the Status Quo and adjusts the price of the gas behind the receipt points so that the producers receive their proportionate share of value based on the quality of their gas.

The equalization alternative would mirror the existing equalization processes used for crude oil and condensate in Alberta. This alternative does not alter the current commercial processes between extraction plants and holders of the extraction rights at the delivery point. Also, it seeks to ensure the protection of the Alberta public interest with respect to the extraction and petrochemical plants through a fair and equitable business model.

The goal of the equalization process is to transfer an appropriate amount of value among producers based on the component content of individual streams using scaled factors for those components that add or subtract from the overall value of the realized common stream price. This would result in leveling the playing field among producers contributing to the common stream. Producers who extract liquid in the field or produce very lean gas streams would compensate producers who deliver richer streams thereby equalizing the content value of the common stream.

The Equalization Alternative model would provide for equalization factors and scales for natural gas that would be developed and maintained in the same manner as the crude and condensate program is administered today. Heating value, as the primary driver of value for extraction rights, is the obvious factor to use in the equalization of natural gas. As an option, detailed equalization scales could also be developed using the components of residue gas that affect the gross heating value:

- Ethane-plus hydrocarbon component content;
- CO₂ content or total non-hydrocarbon gas content.

Benefits of the Equalization Alternative are considered to be:

- rich gas would receive higher value than lean gas;
- extraction contracts would continue to follow the physical flow of the gas;

²⁰² Exhibit 001-08-02, NECTF Report, pages 25-27

- no identified impact on the viability of the NIT market;
- receipt shippers would notice an impact on their revenues but producer revenues may not be affected;
- the incentive for field extraction may lessen because producers of rich gas would be compensated for the value they contribute to the common stream;
- contractual arrangements would remain between export shippers and extraction plants.

Some potential issues include:

- difficulty in establishing the equalization scales;
- the potential exists for side-stream plant participants to receive equalization twice;
- administration and data collection.

The mechanism to determine market price of extraction rights and the system to distribute revenues between lean and rich gas producers was not provided in the NECTF Report nor in other evidence filed with the Inquiry.

The Gas Equalization Model would maintain the current commercial relationships between delivery shippers and extraction plants. The delivery shippers would continue to benefit from extraction rights.

5.2.5 Positions of Parties Respecting the Gas Equalization Model

The Gas Equalization Model was not directly sponsored by any of the participants in the Inquiry.

In response to information requests from WEG, the Inquiry Expert provided the following comments on the Gas Equalization Model:

Ziff Energy focused on the current convention and the receipt point convention, as these were the only two conventions proposed by parties to the proceeding.²⁰³

The Inquiry Expert provided the following assessment of strengths and weaknesses:

Strengths: Gas Equalization Model:

- reduces inequities between lean and rich gas shippers
- no impact on straddle plants and export shippers, as the current convention is maintained for allocation of extraction rights.

Weaknesses: Gas Equalization Model

- this model does not provide receipt shippers with direct recognition of the value of extraction rights, nor does it allow them to negotiate the value and sale of such rights
- no potential benefits associated with developing an extraction rights trading market, as is contemplated by NEXT.²⁰⁴

WEG/Tenaska considered that the Inquiry Expert analysis of alternatives fell short with regard to assessing alternatives that might utilize the status quo convention such as with the Gas Equalization Model. In that regard, WEG/Tenaska requested clarification respecting the extent to

²⁰³ Exhibit 049-09-12, Response to TENASKA-ZIFF-3(a)(i)

²⁰⁴ Exhibit 049-09-14, Response to WEG-Ziff-4

which the Gas Equalization Model ought to have been considered by the Inquiry Expert and requested a direction from the Board for the Inquiry Expert to specifically address the Gas Equalization Model in its testimony. As discussed in Appendix 5, the Board declined to give that direction.

WEG/Tenaska suggested that the Gas Equalization Model would alleviate any rich versus lean gas inequities utilizing the existing delivery point convention without the problems it considered would arise with a receipt point convention.

ConocoPhillips considered that the Gas Equalization Model was inappropriate on the basis that it presumed the NGL extraction value to be included in the NIT price. In cross examination by Board Counsel, ConocoPhillips commented as follows:²⁰⁵

Q. Thank you, sir. Sir, have you considered the gas equalization model?

A. MR. NICKS: Not really; and you know, when I read the issue of NGL value being entrained in NIT, I shut down right there and didn't spend much time on it because I adamantly, absolutely, do not believe that NGL extraction value is in NIT.

Shell also considered the Gas Equalization Model to be inappropriate as it made an assumption that the value of the entrained NGL is reflected in the NIT market price.²⁰⁶

The SOA also did not consider the Gas Equalization Model to be appropriate. During cross-examination by counsel for WEG/Tenaska the following exchange occurred:

Q. If it could be demonstrated that the gas equalization model would provide fair value for NGLs to the State of Alaska's satisfaction, would the State then endorse that? You said you would consider other models, so if it achieved what you want you would consider it?

A. MR. BIDWELL: Well, I would if I was a complete blank slate but I'm not quite because I did read the NECTF report and the concept that was -- where they talk about the gas equalization method; and in my view, it could be -- it would not be sufficient to provide fair value for producers, any producers' entrained natural gas liquids because it only looks at the NIT value and doesn't look at extraction rights or the value of those rights. And so I just don't see -- so, you know, if what you're calling the equalization method has nothing to do with what was portrayed in the NECTF report but something completely different, then maybe we would be willing to listen to it to figure out what it was. But if it had anything to do or it had its origins in the concepts elucidated in that report, then I don't think it is a fruitful avenue to go down.²⁰⁷

5.3 Board Conclusions and Recommendations With Respect to Extraction Rights

5.3.1 NGL Ownership Rights

The Board continues to hold the view, expressed in the Gulf Strachan and Solex Decisions, that resource ownership should remain with the producer of the resource until the producer relinquishes ownership through a commercial contract. NGL are part of the natural gas resource produced from wells, and thus in the Board's view, the producers of natural gas have the right to the NGL entrained in the gas they produce until such time as they contract that entitlement to another party. Under the Current Convention, only an export delivery shipper has an entitlement to contract with respect to the extraction rights associated with gas being transported on the

²⁰⁵ Transcript Volume 17, page 2270

²⁰⁶ Shell Reply Argument, pages 20-21

²⁰⁷ Transcript Volume 10, pages 1129-1130

NGTL System. As discussed in Section 5.3.3 below, the Board is persuaded by the evidence of those parties that suggest that the value of NGL are either not included in the NIT price or that any such value is negligible. Accordingly, producers/receipt shippers do not have an opportunity under the Current Convention to realize an incremental value for extraction rights or to separately contract for the disposition of their proportionate entitlement to the NGL components of the Common Stream if they wish to sell their gas in the intra-Alberta market. The Board is not satisfied that the requirement under the Current Convention to take out export delivery service in order to obtain NGL extraction rights is an adequate opportunity for producers to realize the potential value of the extraction rights associated with their proportionate share of the NGL components contained within the Common Stream. The Board agrees that the Current Convention creates an inequity for producers/receipt shippers who do not wish to acquire export delivery service, but yet would like to receive value for the extraction rights associated with their proportionate share of the Common Stream.

With respect to both the ATCO Pipelines and AltaGas Utilities systems, the Board notes that the terms of their respective tariffs act as a contract to remove entitlement to extraction rights from producers/receipt shippers. In principle, the Board considers that producers/receipt shippers wherever located within the province, should have an equal ability to realize the value of the extraction rights associated with the natural gas that they bring to a rate regulated pipeline for transmission to market.

The Board therefore believes there is a principled basis for assessing whether the existing extraction conventions can be changed to address this inequity without causing inappropriate or unintended repercussions, excess costs or market turmoil.

5.3.2 Supply and Demand Implications

In assessing whether the extraction conventions should be changed, the Board has considered two aspects of the natural gas and NGL marketplace in Alberta that are changing. First, future Alberta gas production will likely be flat or declining and NGTL's intra-Alberta gas deliveries will increase. Second, without additional ex-Alberta gas supplies, there will be lower gas flows to border straddle plants and delivery points. In turn, NGL recovery from straddle plants for value-added upgrading by the Alberta petrochemical industry will be reduced.

Recognizing that Alaska gas is expected to be much higher in NGL content, particularly ethane, than the current typical Alberta stream, certain Alaska shippers have identified NGL ownership and entitlement to extraction rights value to be of great importance to them. In its opening remarks the SOA indicated that the NGL convention on the NGTL System was an important component to a decision to use Alberta infrastructure.²⁰⁸

The State of Alaska's interest in the proceeding stems from the prospect of Alaska gas entering the NOVA Gas Transmission Ltd. NGTL system in a little over a decade.

The State receives a royalty share and levies a production tax on gas and entrained natural gas liquids that may enter the NGTL system.

Like any royalty owner or producer, it wants a fair value for the NGLs entrained in the gas. The State believes the perceived inequities identified in the NGL extraction convention task force September 2005 report, the NECTF report, are real, and that the current NGL extraction convention would prevent the State of Alaska and Alaska gas producers from realizing fair value for NGLs.

²⁰⁸ Transcript Volume 10, pages 1009-1010

The State, Alaska gas producers, and TransCanada Alaska are making decisions, now, about a project that could bring gas into the NGTL system.

In that decision making process, knowing now the NGL extraction convention, the State and Alaska gas producers can expect is crucial. In that regard, the NGTL extraction model or the NEXT model is a step forward, a giant step forward in providing the State and all state producers with the assurance that they can obtain a fair value for their NGLs in a pipeline delivering their gas into the NGTL system.

The Board also notes that the SOA expressed concerns with respect to the lack of a transparent market for ethane²⁰⁹ within Alberta and that a cost effective mechanism needs to be developed to address prorating in relation to volumes of gas delivered to intra-Alberta markets upstream of the straddle plants.²¹⁰ The SOA elaborated that it was hopeful that economic signals would be established such that rich gas would not be consumed for heating without prior removal of the NGL.²¹¹

However, as noted by Mr. Moore from Imperial/EMC in cross examination by Board Counsel, many factors can influence the decision making process with regard to Northern Gas:²¹²

Q. And these details to be worked out, would they trouble at all your affiliates who are trying to decide whether to build an Alaskan pipeline or to build a Mackenzie Delta pipeline, is that enough certainty for them to go ahead and make their investment decisions?

MR. MOORE: I believe to know that the process, the convention, is going to change, I think that would go a long way.

Q. Is that enough for them?

A. MR. MOORE: Well, and I think what I need to be cautious here is in the grand scheme of things with multi-billion dollar projects such as this, the final decision on those types of things is the sum total of many considerations and the Alberta convention would be one of them.

The Inquiry Expert offered the following comments in an exchange with Board Counsel on its changing perception of the relative importance of changing the extraction convention to attract Alaska gas and the role that a change in extraction convention might play in a decision to utilize Alberta infrastructure in bringing Alaskan gas to market:²¹³

Q. ... Sir, I'd like to revisit the question of Alaska that we touched on briefly earlier. And to do that, I first remind you in your discussion last Friday with Mr. Weisberg and again this morning that you indicated that attracting additional sources of gas to Alberta was the second most important factor leading to your recommendation to move to receipt point convention. Do you recall that, sir?

A. MR. VETSCH: Yes, that's right.

Q. I'd like to explore more with you the link between attracting Alaska gas and the Alberta public interest as you view it and the move to receipt point convention.

²⁰⁹ Exhibit 041-06, State of Alaska Opening Statement, page 3

²¹⁰ Transcript Volume 10, page 1015, lines 6-10

²¹¹ Transcript Volume 10, page 1059

²¹² Transcript Volume 20, page 2901

²¹³ Transcript Volume 9, pages 908-909

Could you explain this relationship and how important the need to attract Alaska gas is to use Alberta infrastructure was to your recommendation to move to receipt point contracting?

A. MR. VETSCH: I would say it was fairly important when we initially wrote the report. The more we've gone and discussed this and all the evidence that's put in and the discussions and answering IRs and et cetera, I would suggest it's not as important as it was when we originally wrote the report from the perspective of the uncertainties related to bringing Alaska gas to the system.

But again, it's hard to ignore the fact that, say, the State of Alaska, you know, still appears to support a receipt point convention. And from their second letter, the way I interpreted that, is that they were suggesting that their evidence be taken seriously. And their evidence was that they didn't want to make a decision on what was happening with Alaska gas until this issue was resolved.

So from that perspective, I think it's still an important issue, just maybe not as high as I would have -- you know, when we originally wrote this report.

And then a discussion of the certainty and timing of Alaska gas occurred:²¹⁴

Q. So am I correct then if it's uncertain if Alaska gas will ever arrive in Alberta, and if it does it's uncertain of when it will arrive, further it's uncertain if it will use existing extraction infrastructure, and if it does arrive in Alberta it's probable that it will use existing pipeline infrastructure; is that correct?

A. MR. GWOZD: That's correct. The only certainty I can offer, which is a partial certainty, is that Alaska would not arrive until that 2018 era which is certain for not the next ten years. That's the point I was trying to offer.

There are many factors that may influence whether and when Northern Gas may access Alberta facilities and flow through Alberta. It is the Board's view that changing the NGL convention may be one of them. Based on the consensus view that indigenous Alberta natural gas supply will decline, combined with growing intra-Alberta demand, the Board sees an opportunity to encourage incremental flows through the existing Alberta natural gas and NGL infrastructure as a positive step.

The Board has concluded that making a change to the NGL extraction convention may increase the likelihood that Northern Gas will contribute to incremental flows in Alberta. The Board recognizes the efforts of the SOA and most Northern Gas producers in this proceeding in emphasizing the importance of a change in extraction convention to their decision making processes. Enhancing the likelihood of increased gas flows into Alberta is an important consideration given the potential benefits that may result. However, given the level of uncertainty with respect to both the timing of Northern Gas, and in particular Alaska gas, and the extent to which a change in the extraction convention might influence Alaska producers to use Alberta pipeline and extraction infrastructure in bringing Alaska gas to market, the Board does not believe that this is a strong enough reason by itself to change the convention.

5.3.3 Considerations Regarding a Potential Convention Change

5.3.3.1 Impact to NIT

Parties proposing a change from the Current Convention on the NGTL system expressed a primary concern that the Current Convention precludes producers from receiving the benefits

²¹⁴ Transcript Volume 9, page 911

associated with the NGL in their gas unless they hold export delivery service. These parties considered that a change to a receipt point convention would allow producers who sell their gas at NIT to negotiate a value for the associated NGL at an amount exceeding the heating value of the gas. Other parties suggested that the NIT price already contains recognition of the premium value of NGL and that the NIT market might be negatively impacted by a change to a receipt point convention.

The Board recognizes that if the total North American natural gas market was an ideal market, working perfectly, the NIT price might well recognize some premium value for NGL. However, detecting that premium value, if it exists, would be very difficult. This was discussed by Mr. Drazen in cross examination by Counsel for NOVA Chemicals:²¹⁵

Q. I'm looking at lines 17 to 20, and the question is, For my clarification, it remains your position that there is no transparency to show any NGL value at NIT; correct?

A. MR. DRAZEN: I didn't use the word transparency." I said we can't demonstrate it empirically.

Q. That continues to be your position, sir?

A. MR. DRAZEN: Yes. The problem is that -- even where you have full transparency, when you are trying to measure a small amount relative to a large value and large variations, it's very difficult to do it. It's like trying to weigh a diamond when you are riding in the back of a flatbed truck.

In cross examination by Counsel for NGTL the following exchange occurred:²¹⁶

DR. MANSELL: Mr. Foran, could I just add something to that, just to emphasize really that in all of our evidence what we've argued is the extraction premium is built into NIT, not the uplift value. I know Dr. Safir indicated that he was looking for that 11 cent jump in price, but really what we're talking about is the 2 or 3 cents. And the question is, is the 2 or 3 cents embedded somewhere in the NIT price?

And the simple way of looking at it is if you agree that the prices in different hubs are connected by transportation costs -- and I think most agree, although it's not one-to-one -- and if you agree that that extraction premium can be viewed as an offset to the transportation costs, let's say, from Alberta to California, then logically the 2 or 3 cents of extraction value must be embedded in there. It's illogical to say, well, it doesn't include the extraction premium but it includes transportation costs.

And what we're simply saying is that the amount that you're looking for relative to the noise, the fluctuations in the prices in different basins relative to the transportation cost, that noise is sufficient that it's difficult to extract a signal as small as 2 or 3 cents that is to have that level of precision in the estimation.

I think that's what we're grappling with. It's not that -- I should add that it also varies from time to time, depending on what margin is setting the market price, whether it's the California market or some other market.

So it's really those combination of things that make it difficult to come up with a precise estimate as opposed to suggesting that it's not embedded in some way.

Q. So it's the noise?

A. DR. MANSELL: Sorry?

²¹⁵ Transcript Volume 22, page 3099

²¹⁶ Transcript Volume 22, pages 3230-3231

Q. It's the noise?

A. DR. MANSELL: It's buried in the noise and it will be difficult to extract it from the noise. And certainly to do that, you need fairly sophisticated statistical techniques, and no one at this hearing has really undertaken to do that statistical evaluation that's required.

The Board is not convinced that the NIT price contains any detectable amount attributable to extraction rights value. Furthermore, the Board expects that it would be extremely difficult, and perhaps impossible, to monitor or detect any variation in NIT prices as a result of a change to the convention, as it considers other factors contributing to market price volatility would overshadow any impact due to a convention change. Similarly, the Board is not persuaded that there will be any distortion or loss of NIT market liquidity associated with a change in extraction convention as referenced by Mr. MacDonald from Shell in cross-examination.²¹⁷

Q. And, sir, could you go through that list and tell me why you disagree and to the extent you've put effort and analysis into the reasons for your disagreement to express those as opposed to your opinion today?

A. The next one is again coming back to the NIT liquidity. We don't believe it's in NIT, and therefore, we don't believe it's going to affect the liquidity.

I would also point out that even during the NECTF process, and this is documented in the NECTF report, that a change to any of the potential options that were evaluated that the group did not identify that an impact on NIT liquidity or viability was a concern; and although it can be -- it will be argued, I'm sure, that not everybody agreed with everything in the NECTF report, including myself, I don't think that we would have clearly identified that as we went through each of the options if there had been significant view that there was a major risk there. So again we just don't -- we just don't buy that.

5.3.3.2 Upset to System Operations

Proponents of change in the extraction convention argued that a change would not result in an upheaval to the ongoing operation of the system. NGTL submitted that the NEXT Model is operationally very similar to the Current Convention with the exception that the algorithm that is used to allocate extraction rights to shippers is different.

The Board is persuaded that a change to a receipt point convention will not result in substantial upheaval to the ongoing operation of the NGTL System.

5.3.3.3 Financial Effects on Other Parties of a Change in Convention

Imperial/EMC considered that there might be a transfer of wealth from the straddle plants to the producers/receipt shippers with a change to the convention as acknowledged by Mr. Moore on behalf of Imperial/EMC in cross-examination by Board Counsel.²¹⁸

Q. But, sir, isn't this the real issue that your proposal raises for the Board to consider, that whether you have one, two, three or zero straddle plants actually declared to be common processors, the threat of being able to do so will effectively end up with a transfer of a large portion of the frac spread from the straddle plant business to receipt shippers? ...

²¹⁷ Transcript Volume 17, page 2295

²¹⁸ Transcript Volume 21, pages 2974-2975

A. MR. MOORE: We're talking about creating a market, Mr. McNulty, in terms of where essentially the receipt point shippers, who are ultimately producers one way or another, have the opportunity to basically negotiate for that value. And I guess if we have to be -- I can't say exactly what will happen in negotiating from that value, but our particular view is that first and foremost this thing is about equity and we've always felt that -- we feel the convention is not equitable, it's not basically allocating the value to the parties that should have the right -- that do have the right and should have the tools from that right to be able to negotiate from that value. And if it results in a transfer, that is the equitable result, but it will be a function of what the commercial negotiation can be -- the result of commercial negotiations in that new convention.

Q. So, sir, would I be incorrect to say the answer is yes?

A. MR. MOORE: The short answer would be yes,

While parties acknowledged that this change would involve a transfer of wealth in some combination from delivery shippers/straddle plant owners to producers/receipt shippers, it is the Board's view that the benefactors of the current arrangement have become the benefactors more by historic evolution of the market and of the rate design and transportation services of the NGTL System, rather than from a clear or explicit entitlement or through an express trade off of costs and benefits in arriving at the current rate design for the NGTL System. Parties taking exception to a change were generally the straddle plant owners and parties who primarily hold export delivery service. To the extent that parties objecting to a change in extraction convention consider that the underlying principles of the existing rate design should be revisited should the extraction convention change, they are free to raise this concern in a subsequent forum dealing with rate design on the NGTL System. Straddle plant owners will continue to have to negotiate with holders of extraction rights as they did before, and the arrangements arrived at will be both a consequence of relative bargaining position and competitive alternatives. To the extent that a change in extraction convention enhances competition for extraction rights without a diminution in the opportunity for NGL recovery, the Board considers such an outcome to be in the public interest. The Board notes the following exchange between Dr. Mansell and Board Counsel following a discussion of factors to be considered in evaluating the costs and benefits of competition:

Q. Sir, would you agree that sometimes the result in a short term may be detriments to overall social welfare or social impact, wealth reduction, but in the long term, competition may actually increase social welfare?

A. DR. MANSELL: As a general statement, that's true, yes; and that's why I think one would always want to take a reasonably long horizon in the analysis.²¹⁹

5.3.3.4 Costs of a Change to the Current Convention

Parties proposing a change from the Current Convention suggested that the implementation cost would be relatively modest with a capital cost in the order of \$10 million.

As part of the Unsupported and Unsponsored Evidence the SPG estimated much higher one-time costs of \$39 million as well as ongoing costs of \$103 million/year plus several hundred million dollars per year of potential costs.²²⁰ Board Counsel explored these cost estimates with the SPG,²²¹ wherein little or no support aside from a survey of straddle plants in connection with potential costs to the straddle plants was provided for such estimates. For example, the SPG

²¹⁹ Transcript Volume 24, page 3572

²²⁰ Exhibit 042-07-01, SPG Rebuttal Evidence, page 30

²²¹ Transcript Volume 24, pages 3580-3619

explanation for some of the suggested costs of a change in extraction convention included the following exchange:²²²

Q. Again, sir, just for my understanding, the straddle plant costs is simply -- you simply acted as a collector of data and aggregator. You weren't interpreting or analyzing that data; is that correct?

A. DR. MANSELL: That's correct, other than conversations I had to make sure that they understood what I wanted and I understood what they were giving me. And so I needed to know what categories that they were putting their costs in and so on.

Q. And so the narrative that describes straddle plant costs on page 23, that reflects the survey results?

A. MR. GOOBIE: It does.

Q. And this was written by you, that page?

A. DR. MANSELL: Yes, that would have been all written by me.

Q. Okay. Thank you, sir. Mr. Goobie?

A. MR. GOOBIE: Yes, and consistent with what Dr. Mansell just said, most of the rest of this was -- I did an initial calculation of a lot of these numbers. The text, the description of it was discussed with members of the Straddle Plant Group. So in a series of reviews and discussions of the numbers, a couple of drafts, I suppose, went into the description here. I can't claim that I was responsible for every word or that I wrote every word, but I certainly contributed; and as Dr. Mansell said, the rest of these costs would primarily have started with me.

Q. And I'm not quite sure whether you are saying that the numbers, the ranges for these costs, is that your expert evidence, or is that a result of a product of discussion among the Straddle Plant Group members and yourself or --

A. MR. GOOBIE: That, more the latter, the product of discussion. Certainly things like regulatory costs, how much do we think regulatory costs would come to. That was certainly a subject of an amount of discussion amongst the different parties and back and forth in terms of what do we really think that would likely come to. Costs of contract changes, a considerable amount of discussion around, okay, well, what kind of contracts, what are the changes; the changes to the Gas EDI contracts, what would that comprise.

So a lot of that was discussions with all of the Straddle Plant Group members to really try to get a good handle on what those might be.

Q. And so none of these costs were the result of a confidential survey of any kind?

A. MR. GOOBIE: None of the rest, no, would have been.

A further example included the following exchange with Board Counsel:²²³

...After receipt point contracting comes in, that shipper is going to put the same 100 units on but now they are going to have 10 units that go to shrinkage right away and that volume is not going to be available to be traded in the NIT market. So that creates a 10 percent loss of volume available to be traded in the NIT market.

If the whole thing goes that way, we're talking roughly bcf a day of gas. So we said okay, if 100 percent -- if all of that shrinkage, the whole bcf a day, if that leaves the NIT

²²² Transcript Volume 24, pages 3578-3580

²²³ Transcript Volume 24, pages 3602-3603

market, how much is that? 10 percent. Could a 10 percent change in the volume traded on the NIT market, could that have a .1 percent impact?

Difficult to say, but seems reasonable, there could be and should be some impact there. And if it's only 1 cent a GJ on \$10 gas, that works out to a number in the \$100 million range.

Now what would offset that? Well, will it all go that way? Will 100 percent of the shrinkage be expected to be made up by the receipt shippers? Probably not.

Will it be close to a bcf? Certainly we're going to start out that way. How it will change over time, difficult to say. But the problem you run into is that the numbers become very large very quickly. And if you start changing the way the system works, it's our judgment and my judgment that you have a very high probability of potentially having some significant impacts. So that's where the 100 -- potential of several hundred million dollars came from.

A similar situation with respect to NIT complexity as I've described, that if you've got these different contracts, if you've got these conditional NITs, what does that do? Will that drive parties away from the NIT market? Will that reduce the amount of trading that goes on?

Hard to say, but as we have pointed out, these are likely scenarios that will unfold and we believe they could have a very material impact in terms of the total dollars. Will it be seen in the NIT market? Will the NIT traders care? Hard to say, but I don't think you can ignore it; and we're pointing out these could be very real, very material costs.

The Board believes there may be costs, for example, related to new contracts at straddle plants, that could cause the total costs to be higher than as estimated by NGTL. It does not believe they would be substantially higher. The Board does not consider that the SPG explanation for some of its cost estimates are substantiated or reliable.

The Board has assessed the information available with regard to any transitional concerns that might arise with regard to existing contractual relationships between the straddle plants and delivery shippers arising from business previously transacted under the Current Convention. The following information was provided:²²⁴

The final piece of information collected in the survey of straddle plant owners was the distribution of contracts by length of term. Owners were asked to provide the volumes subject to short-term (1 year or less), medium term (1-4 years) and long-term (4+ years) contracts. In total, about 55% of the volumes contracted were subject to short-term contracts in 2006, with the remainder of volumes roughly equally split (about 23% each) between medium-term and long-term contracts. Although most of the contracts would expire and could be renegotiated within a year or less, the substantial number of long term contracts would mean that there would certainly be considerable transitional difficulties and costs arising from a change in the extraction convention.

The SPG was reluctant to provide further specifics with regard to contract expiries considering that information to be commercially sensitive and now forms part of the Unsupported and Un-sponsored Evidence.

With respect to contract expiry provisions, ADOE suggested that the straddle plants ought to have been incorporating contract provisions accommodating a different convention since the Solex Decision. The ADOE stated the following in its Argument:²²⁵

²²⁴ Exhibit 042-02-03, SPG Mansell Evidence, page 20

²²⁵ ADOE Argument, page 4

Industry participants have been aware since January of 2004, when the Solex Decision was issued, that the Board was concerned with perceived inequities and that industry was expected to resolve it. Over four years have elapsed since that time and industry participants who are engaging in commercial arrangements associated with NGL extraction should have adjusted their contracting practices to anticipate and guard against any financial harm in the event of a regulatory change.

5.3.3.5 Conclusion With Respect to the Need for Change the Current Convention

Consistent with its findings in the Gulf Strachan Decision and Solex Decision, the Board considers that resource ownership should remain with the producers of the resource until relinquished through a commercial contract. A change in extraction convention to provide producers with the opportunity to realize the value of their extraction rights is consistent with this principle.

The Board is not persuaded that a change to a receipt point convention would create uncertainty or damage the longevity of the existing straddle plants, particularly if a reasonable transition period were incorporated and given the lack of supporting data provided by the straddle plants with regard to contract duration or expiry provisions. The Board anticipates that most of the existing commercial arrangements between straddle plants and delivery shippers are of a short-term nature or could otherwise be renegotiated given a decision to change conventions.

The Board believes there may be costs, for example related to new contracts at straddle plants that could cause the total costs to be higher than as estimated by NGTL. It does not believe they would be substantially higher.

The Board believes that a change to a receipt point convention on the NGTL System could provide all parties with more equitable market signals by providing producers and receipt shippers with the opportunity to negotiate separately for the value of their extraction rights which should encourage the development of a competitive, transparent extraction rights market.

Further, the Board concurs that there are significant benefits associated with attracting potential new intra-Alberta and ex-Alberta gas volumes that could utilize the existing infrastructure including straddle plants and transmission pipelines in an optimum fashion.

Providing an incentive to receipt shippers to provide gas onto Alberta regulated pipelines should similarly reduce producer incentives to provide new field extraction as a means of realizing the value of entrained NGL. This should enhance the continued viability of existing pipeline and extraction infrastructure while providing a competitive environment for extraction rights.

In the Board's view, the consideration of a change in extraction convention is fully within its jurisdiction to provide for the economic, orderly and efficient development of Alberta's natural resources. The Board considers it to be in the Alberta public interest to encourage to the maximum extent practical, the extraction of NGL within the Province of Alberta, for use, upgrading or sale within Alberta while providing the owners of the NGL with fair compensation. Determining the appropriate extraction convention is directly related to the achievement of these public interest objectives.

In summary, the Board takes the position that resource ownership should remain with the producers until relinquished through a commercial contract and that a change in the extraction convention is consistent with this position. It is also of the view that a change to the convention would assist in attracting ex-Alberta gas to use existing infrastructure. Based on a review of the evidence, the Board is not persuaded that a change to the convention would severely impact the

viability of the straddle plant system, nor have a negative impact on the liquidity or price of gas in the NIT market.

Finally, a change in the extraction convention has the potential to provide more equitable market signals through the creation of a competitive, transparent extraction rights market and could likely be accomplished at a reasonable cost.

For all of these reasons, the Board concludes that a transition from the Current Convention on the NGTL System to one which would provide a more direct opportunity for producers and receipt shippers to access the fair value of extraction rights with respect to their NGL is warranted.

The Board's views regarding alternative conventions are discussed in the following section.

5.3.4 Convention Alternatives

As discussed above, the Board agrees with the concerns of the majority of participants in the Inquiry that the Current Convention creates inequities with regard to producers or receipt shippers not being able to access the fair value of extraction rights with respect to the NGL entrained in the gas receipted onto the NGTL System unless those parties hold export delivery service on the NGTL System.

Given the Board's finding, the Board considers it appropriate to assess alternative approaches to the Current Convention to determine if a more equitable allocation methodology can be adopted, provided such methodology does not create greater inequities, is cost effective, can be reasonably implemented and is administratively practical.

5.3.4.1 Gas Equalization Model

With regard to the Gas Equalization Model, the Board considers that this method would potentially alleviate some of the inequities between rich and lean gas associated with the Current Convention as it would introduce a transfer of wealth from lean gas shippers to rich gas shippers. The Gas Equalization Model would facilitate a directional equity enhancement while maintaining the status quo associated with the Current Convention.

The Board notes the position of Shell and ConocoPhillips who considered the Gas Equalization Model to be inappropriate given that it assumes the value of the entrained NGL is reflected in the NIT market price. As indicated earlier, the Board is not persuaded that the value of the NGL is contained in the NIT gas price.

In addition, no participant in the Inquiry, other than WEG/Tenaska, appeared to be supportive of a consideration of the Gas Equalization Model. No party provided evidence which assessed or provided a methodology for developing the required scaling factors or provided an overview of the mechanics required for implementation.

For these reasons, the Board is not prepared to recommend the Gas Equalization Model as an alternative for replacing the Current Convention.

5.3.4.2 Shell Model

Shell withdrew its heating value based receipt point convention, which was conceptually similar to the NEXT Model, but utilized heating value of the gas receipts rather than components. Instead, Shell provided support toward implementing the NEXT Model. Accordingly the Board has not further considered the merits of the Shell proposal.

5.3.4.3 NEXT and CCM Models

Given the similarity of the NEXT and CCM models, the Board will assess and compare them together in this section of the Decision.

The Board considers that both the NEXT and CCM models would provide viable receipt point convention alternatives. Clearly, the NEXT Model is more fully developed and documented with regard to implementation. The CCM model requires the involvement of the straddle plants in working out the details of implementation and to resolve issues in relation to extending the model to the downstream side of the straddle plants.

In some respects, the drawback associated with the lack of development of the CCM model may be offset by some of its attributes in comparison to NEXT. One example is that the CCM model would not require pricing of NGL components as required by NEXT. This would alleviate any concerns that the pricing is out of phase with a time delay from prevailing market conditions. Additionally, it would alleviate the current lack of market price availability for ethane.

The Board considers that the implementation costs for either the NEXT or CCM model would be generally similar, with the CCM model introducing some incremental, but not yet estimated costs in association with developing procedures to include the straddle plants in the process so that components could be determined at the outlet of the straddle plants.

Imperial/EMC submitted that a key component of a change in the convention must include the ability to take NGL in kind and to have regulatory recourse in the event of unsatisfactory negotiations. The Board is not persuaded at this time that the regulation of the straddle plants or the regulatory intervention of the Board in order to facilitate the taking in kind of NGL is appropriate. The straddle plants have operated on an unregulated basis since their construction. If the Current Convention is changed, and problems such as those alluded to by Imperial/EMC do materialize, parties would be free to exercise their complaint options with the regulator under the legislation. The Board also notes that NGTL suggested that it would be prepared to facilitate taking NGL in kind with its NEXT Model²²⁶ and the Board considers that this would be an appropriate step for NGTL to pursue.

Under cross-examination, partially referred to in Section 5.3.3.3 above, Mr. Moore from Imperial/EMC indicated the following perspectives with regard to the straddle plants being considered as common processors in the context of negotiations including value for the fractionation spread:²²⁷

Q. So is it Imperial's position then that it needs the common processor recourse because if you can't obtain a fair price for your extraction rights then you will need to try to negotiate to take those rights in kind and the ability to file a common processor application if they refuse or charge unreasonable extraction fee is the ability to negotiate effectively a reasonable fee?

A. MR. MOORE: Mr. McNulty, in our view it provides a level playing field. And to be quite candid with you, from our perspective we are dealing with an issue that has a commodity value and a processing fee value and there can sometimes in negotiations be a very large gray area between the two. This particular proposal focuses on trying to make sure that gray area is as thin as possible.

²²⁶ Transcript Volume 15, page 1915

²²⁷ Transcript Volume 21, pages 2973-2975

Q. So, sir, isn't the likely result of what you're proposing, isn't the likely result to be that extraction right holders armed with the ability to apply to have straddle plants declared to be common processors will effectively force the straddle plants into a cost of service business effecting a transfer of a large portion of the frac spread from the straddle plants to the extraction rights holders?

A. MR. MOORE: Again, Mr. McNulty, I think what we're basically trying to do here is deal with the exceptions and the breach on a one-off basis. We're not really trying to see this as something that becomes a broader issue.

Q. But, sir, isn't this the real issue that your proposal raises for the Board to consider, that whether you have one, two, three or zero straddle plants actually declared to be common processors, the threat of being able to do so will effectively end up with a transfer of a large portion of the frac spread from the straddle plant business to receipt shippers?

A. MR. MOORE: I think ultimately, Mr. McNulty, we'd be asking the Board to -- in this particular complaint process -- to consider it as to what seems to be fair within the marketplace. And maybe I could ask Dr. Safir to address it from a market perspective.

Q. Certainly, sir, but just before do that, I'd like an answer to the question: Is that really what we're talking about here? Is that the key issue?

A. MR. MOORE: We're talking about creating a market, Mr. McNulty, in terms of where essentially the receipt point shippers, who are ultimately producers one way or another, have the opportunity to basically negotiate for that value. And I guess if we have to be -- I can't say exactly what will happen in negotiating from that value, but our particular view is that first and foremost this thing is about equity and we've always felt that -- we feel the convention is not equitable, it's not basically allocating the value to the parties that should have the right -- that do have the right and should have the tools from that right to be able to negotiate from that value. And if it results in a transfer, that is the equitable result, but it will be a function of what the commercial negotiation can be -- the result of commercial negotiations in that new convention.

Q. So, sir, would I be incorrect to say the answer is yes?

A. MR. MOORE: The short answer would be yes, Mr. McNulty.

The Board considers that there is equity in realigning the convention to provide value to the producers for the extraction rights, and that it is appropriate for NGTL to address the facilitation of taking NGL in kind with its NEXT Model. However the Board would have concerns with the reasonableness of any suggestion that a change in extraction convention requires the straddle plants to be essentially regulated and operated on a cost-of-service basis.

The Board notes that, among the parties in favour of implementing a change to a receipt point convention, the NEXT Model was recommended by all parties, even directionally by Imperial/EMC, as evidenced in the quote below. That said, the Board also notes that the parties supportive of a receipt point convention did not criticize any of the attributes of the CCM model. Instead, these parties were mostly silent on the CCM model and supportive of the more fully developed NEXT Model. The Board notes that Imperial/EMC suggested, as follows, in cross examination by Board Counsel that if NEXT were implemented and Imperial/EMC considered that further enhancements were still required, it would consider pursuing them further at that time.²²⁸

Q. -- given your concerns with respect to transparency of the extraction rights market, if the Board agreed with those, is that sufficient basis, in your view -- would Imperial like the Board to turn down the NEXT model until those transparency issues were addressed?

A. MR. MOORE: We would still feel very strongly about the principle and -- but the NEXT model would be a second-best solution.

Q. So the Board should approve it?

A. DR. SAFIR: Under the circumstances that you've outlined

Q. Sorry, Dr. Safir, I just want to get the company's position on that point.

A. DR. SAFIR: Okay.

A. MR. MOORE: We're basically here saying that the Board should implement our proposal and not necessarily the NEXT model. However, if they chose to implement the NEXT model, we would suggest the Board should -- and they had concerns for the points that we had made -- having some manner of receipt point contracting would be an important issue, but it would probably result in us being back to probably try and address it further if we could.

Q. Okay. Just so clarify what you're saying, you're saying if the Board didn't want to proceed with the Imperial model it should go ahead and proceed and approve the NEXT model and Imperial would come back if it still had the remaining concerns and try and address them in a different way; is that correct?

A. MR. MOORE: That's correct.

The details of the NEXT Model are well developed, and indeed, much of the internal workings of the model are similar to the system now supporting the Current Convention. It could thus be implemented in a reasonable time period and the Board is persuaded that the costs of converting to the model would not be great.

The NEXT Model would appear to be equal to or better than any other model considered in terms of its ability to resolve existing inequities. The Board notes that by assigning extraction rights to receipt shippers, the extraction rights would be allocated to either producers who are also receipt shippers, or to parties that have purchased gas from producers. The Board accepts that this will place producers in more direct contact with the holders of extraction rights, which should make it possible for a producer to negotiate for an appropriate share of the NGL value in the gas (Perceived Inequities 3, 4, and 5). The Board also notes that under NEXT, extraction rights are only received for the NGL content contained in the gas relative to the NGL content contained in the Common Stream. Therefore, receipt shippers who place dry gas (with limited NGL content) onto NGTL, or producers/shippers who extract NGL in the field would only receive credit for the NGL that is actually delivered onto the Common Stream (Perceived Inequities 1 and 2a).

There is one Perceived Inequity that is not addressed by the NEXT Model. The Board recognizes that an aspect of "double dipping" (Perceived Inequity 2b) is not fully resolved. In particular, gas that is delivered to NGTL downstream of extraction facilities or alternatively, does not access extraction facilities, would still receive extraction rights corresponding to the NGL content of the gas that is delivered to the Common Stream. The Board is satisfied by NGTL's assessment that current shippers at these locations would receive minimal extraction rights under NEXT and therefore this inequity is not material and does not justify the additional complexity and cost required to address it in the NEXT Model. The Board also notes that the NEXT Model is flexible and it can be modified in the future, if necessary.

The Board notes the objectives of the CCM Model are to encourage a direct negotiation of market prices for extraction rights. Other parties to the proceeding emphasized the need for the development of a transparent market for extraction rights particularly in order to ensure the benefit associated with moving to a receipt point convention is available to producers who are not receipt shippers. The Board notes the position of NGTL that the NEXT Model will facilitate the development of an extraction rights market once the extraction rights are segregated and once the banding instructions and pooling instructions can be completed electronically. It also notes that the extraction rights market will be further enhanced given the ability of extraction rights holders to sell extraction rights to any straddle plant on the system. The Board agrees with the objectives of enhanced transparency and marketability of extraction rights. The development of this market will be critical to allowing producers and receipt shippers to negotiate the value of their extraction rights and will be fundamental to the ability of producers who are not receipt shippers to be able to negotiate for a share of the extraction rights value available to receipt shippers. In the Board's view, the NEXT Model presents the environment best suited for the development of a broad based extraction rights market.

For all of these reasons, the Board believes that adoption of the NEXT Model is the appropriate alternative proposal for replacing the Current Convention.

5.3.5 Convention Change Implementation Timing and Compensation

With regard to the timing of the implementation of NEXT, the Board notes that recommendations of parties ranged from 18 months to 3 years.

The Board notes the Shell view that an implementation period of three years without compensation to either straddle plant owners or export delivery shippers would allow time to develop the model as well as allow parties with any existing unexpired extraction or impacted NGL supply contracts to potentially renegotiate them. As discussed in Section 5.3.3, the Board understands that less than 25 percent of the contracts between the straddle plants and delivery shippers have terms extending beyond 2010.²²⁹ The Board has also considered the failure of the straddle plants to provide further clarification with regard to contract expiration and potential contractual provisions concerning the ability to renegotiate longer term contracts.

As referenced by the ADOE in Section 5.3.3, the Board also notes that parties committing to contract ought to have been cautious to protect themselves with regard to the potential risk of changes to the convention subsequent to the Solex Decision.

After consideration of these factors, the Board concurs that a three year transition period from the issuance of this Decision would be reasonable. In view of that relatively lengthy implementation period, and the evidence that the remaining term of most extraction contracts is relatively short, the Board considers that no compensation to straddle plant owners nor to export delivery shippers is warranted.

5.3.6 Applicability to Other Pipelines

Shell suggested that the Current Convention on NGTL, as well as the extraction provisions of the ATCO Pipelines tariff, are inconsistent with past Board decisions indicating that extraction rights remain with producers. Shell noted that its interpretation of past decisions is that extraction rights remain with producers even after the producers' gas and NGL become commingled in the Common Stream on NGTL with the gas and NGL of other producers.

²²⁹ Roughly 23% remaining 4 years after 2006 per SPG Mansell Evidence - Exhibit 042-02-03, page 20

Shell recommended that a receipt point convention should be applicable to all Board regulated pipelines in Alberta. Shell proposed that the Board should recommend to both the Alberta Government and the AUC that a receipt point convention of the nature of NGTL's NEXT Model be implemented for all provincially regulated pipelines. Shell suggested that the Board should direct ATCO Pipelines to meet with its shippers to discuss implementation of a model similar to NEXT on its system. In this regard, Shell noted that the existence of the present ATCO Pipelines' Terms and Conditions transferring extraction rights to ATCO Pipelines should not preclude updating those Terms and Conditions.

Imperial/EMC considered that the CCM model should be extended to ATCO Pipelines and AltaGas Utilities although that could be implemented subsequent to implementation on NGTL.²³⁰

The Board notes the comments of Shell and Imperial/EMC that implementation on ATCO Pipelines as well as potentially on AltaGas Utilities should be explored further with a view to making the treatment of equity issues among these pipelines consistent. The Board is reluctant to make any specific recommendations with respect to the ATCO Pipelines or AltaGas Utilities tariffs given that issues relating to extraction rights on these pipelines were not explored to the same degree as they were in relation to the NGTL System. Further, extraction rights is a matter dealt with by tariffs in the case of ATCO Pipelines and AltaGas Utilities and not by convention. The tariff provides the contractual context for the relationship of the producer/receipt shipper and the pipeline transporter. Parties had and continue to have the ability to raise concerns with these tariffs in each regulatory application in which the tariff is being considered. Nonetheless, the Board considers that producers throughout the province should be treated equitably with respect to the ownership of their resources and should be given equal opportunity to realize the value of their extraction rights no matter which means of transportation they use, particularly where they have no choice as to the system they contract with. The Board considers that ATCO Pipelines and AltaGas Utilities should address this issue with their customers with respect to possible changes to their Terms and Conditions of Service.

The Board notes that discussions are currently ongoing between NGTL and ATCO Pipelines with regard to making the administration of service between their two organizations more fully aligned. It is possible that an adjustment to a receipt point convention might be included within those discussions.

5.3.7 Implementation Recommendations and Next Steps

The Board has carefully considered the evidence and argument filed in the Inquiry in light of the scope of the Inquiry and the Board's jurisdiction with respect to the economic, orderly and efficient development of Alberta's natural resources. The Board considers it to be in the Alberta public interest to encourage to the maximum extent practical, the extraction of NGL within the Province of Alberta, for use, upgrading or sale within Alberta while providing the owners of the NGL with fair compensation. The extraction convention employed on natural gas pipelines regulated by the Board is directly related to the achievement of these public interest objectives.

The Board recommends that the NEXT Model be implemented on the NGTL System within three years of this Decision. NGTL should make the appropriate application to amend its tariff to implement the NEXT Model in accordance with the proposals as set out in its evidence as amended to take into consideration the findings of this Decision.

²³⁰ Transcript Volume 21, page 3018

Prior to filing an application, the Board recommends that NGTL discuss the following matters with its stakeholders with a view to streamlining subsequent regulatory consideration:

- amendments to the NEXT Model to take into consideration the findings of the Board;
- enhancements to the NEXT Model, including measures to facilitate the development of an extraction rights market and to provide for the ability to take-in-kind;
- implementation procedures;
- tariff amendments; and
- regulatory application specifics.

In Section 5.3.4 above the Board concluded that the development of a competitive, transparent extraction rights market will be critical to allowing producers and receipt shippers to negotiate the value of their extraction rights and will be fundamental to the ability of producers who are not receipt shippers to be able to negotiate for a share of the extraction rights value available to receipt shippers. Given this conclusion, the Board recommends that NGTL should take immediate steps to encourage the development of this market. These steps would include consultation with stakeholders, including the ADOE, the TTFP and the straddle plants, aimed at fostering an electronic marketplace for extraction rights and the development of the necessary commercial mechanisms or trading vehicles that may be necessary for its success. In addition, the Board recommends that NGTL should conduct a confidential survey of stakeholders in the extraction rights market two years following the implementation of the NEXT Model to determine whether the developing market achieves the goal of providing a competitive, transparent marketplace for the trading of extraction rights and in particular that it provides producers who are not receipt shippers with the opportunity to negotiate value for their NGL separate and apart from energy value. NGTL should compile and analyze the survey results and file this information together with any recommendations for adjustments with the appropriate regulator(s).

The Board recommends that ATCO Pipelines discuss the continuing appropriateness of its current extraction tariff with its customers and make application for regulatory approval of any amendments that may result from those discussions.

The Board recommends that AltaGas Utilities discuss its current extraction tariff with its customers from the perspective of the continued appropriateness of the tariff should extraction facilities become available on the AltaGas Utilities system or through interconnects with other pipeline systems.

5.3.8 Alliance Pipeline

Alliance Pipeline Ltd. (Alliance Pipeline) noted that it is presently regulated by the NEB and requested that the Inquiry recognize the ongoing facilities and tariff regulation of the NEB, including matters related to disposition of NGL entrained in the natural gas stream.²³¹ Aux Sable Canada Ltd. (Aux Sable) stated that:²³²

NGL extraction rights are clearly defined on the Alliance Pipeline. The NGL extraction rights are conferred to Aux Sable under Alliance's Transportation Tariff and the related Extraction Agreements that each Alliance shipper has entered into with Aux Sable. As

²³¹ Exhibits 005-01, Alliance Pipeline Ltd. Letter of Participation and Exhibit 005-02, Alliance Pipeline Ltd. Letter re Evidentiary Submission

²³² Exhibit 010-02, Aux Sable Canada Ltd. Submission re Letter to EUB, page 2

such, there are no "conventions" for the extraction of NGLs from natural gas on the Alliance pipeline.

The Board offers no comment on this matter as the Final Issues List does not purport to extend the scope of the Inquiry to a consideration of the extraction convention on the Alliance Pipeline. Rather it includes Alberta regulated facilities, like the proposed Fort Saskatchewan extraction facility, that may be servicing NEB regulated pipelines. In that regard the Final Issues List provides:²³³

11. Consideration of NGL Extraction Conventions with respect to EUB regulated facilities on non EUB regulated pipelines including the form of licences, permits or approvals.

5.3.9 Industrial Development Permits

The Board has considered the need for specific terms or conditions for Industrial Development Permits related to ERCB regulated existing or proposed straddle plants or NGL extraction or fractionation facilities. In light of the findings of the Board with respect to supply and demand of NGL and the recommendations of the Board with respect to the enhancement or conservation of natural gas or NGL set out in this Decision, the Board does not consider that such additional measures are necessary at this time.

6 LEAN GAS STREAMING

Lean gas streaming is a concept which involves the separate physical routing of gas that is lean in NGL content directly to consumption markets and away from common stream flow paths directed past NGL extraction facilities. While the issue primarily relates to the NGTL System, it is also applicable to the ATCO Pipelines System and may be relevant at some future time to AltaGas Utilities. Proponents of lean gas streaming suggest that, where cost effective, lean gas should be routed to meet the demand of intra-Alberta markets which generally do not provide NGL extraction opportunities. Supplying burner-tip markets with lean gas, will help to ensure that NGL rich gas is available to be processed at the extraction facilities which, on the NGTL System, are primarily located upstream of provincial export points.

A readily apparent opportunity for lean gas streaming arises with respect to the recently increasing volumes of CBM which are being developed within Alberta. CBM is generally very lean, composed almost entirely of methane and sources are generally located within in a defined geographical area.

6.1 Views of Inquiry Participants

NGTL considered that the lean gas streaming issue in this Inquiry relates predominantly to the impact of CBM on the NGTL System. Given its composition, CBM tends to dilute the NGL concentration in the Common Stream. NGTL provided a concept²³⁴ to mitigate the impact of CBM by altering the flow configuration in certain portions of its system to redirect CBM toward intra-Alberta markets and away from the inlet of straddle plants. NGTL noted that some lean gas streaming solutions have the potential to be expensive and would result in changes to traditional facility design and operational philosophies. While NGTL was generally supportive of the

²³³ Exhibit 001-08, Board Process letter, Final Issues List, Scoping Document, & Revised Schedule - July 6, 2007, Attachment 3, Item 11 and Appendix 4

²³⁴ Exhibit 034-03, NGTL Submission, pages 23-29

concept of lean gas streaming, NGTL expressed concern that uncontrolled expenditures would increase the overall cost of the NGTL System.

NGTL submitted that the issue of lean gas streaming is independent of the convention utilized for NGL extraction on its system.²³⁵

NGTL recommended that lean gas streaming alternatives be assessed within an industry forum such as the NGTL TTFP committee. This forum would discuss alternatives, costs, benefits, beneficiaries and cost allocation issues. NGTL considered it important that the beneficiaries of lean gas streaming should be responsible for the associated costs.²³⁶

NGTL considered that the TTFP could provide the EUB with an outline of its proposed approach to deal with guidelines and criteria for lean gas streaming, rather than having such criteria prescribed specifically by the EUB as a result of this Inquiry.

With respect to the issue of Lean Gas Streaming, NGTL observes that there appears to be a general consensus that this issue is complex and would best be discussed within a collaborative industry forum such as NGTL's TTFP committee. Industry needs to assess the costs and benefits of lean gas streaming, the beneficiaries of lean gas streaming, and how the costs of lean gas streaming be recovered. Generally speaking NGTL supports the concept of lean gas streaming when sensibly applied. However NGTL is concerned that the implementation of lean gas streaming to an unreasonable degree could result in significant costs being added to its system. This could result in material impact to the competitiveness of the WCSB. As a result, NGTL believes that it would not be appropriate for the Board to be overly prescriptive with respect to lean gas streaming and recommends that the Board endorse a collaborative industry process.²³⁷

ATCO Pipelines indicated that it was generally supportive of lean gas streaming to direct rich gas toward NGL extraction facilities rather than being consumed as fuel. It expressed concern that potential lean gas streaming projects should not be allowed to adversely impact the NGL supply available to the extraction facilities on the ATCO Pipelines System. ATCO Pipelines supported a collaborative industry process to assess lean gas streaming, but cautioned that the TTFP might not provide a broad enough forum to include all impacted parties.

NOVA Chemicals supported the concept of lean gas streaming. In the absence of lean gas streaming, NOVA Chemicals noted the potential impact of new transmission facilities serving intra-Alberta markets on the availability of NGL. NOVA Chemicals expressed concern that any potential increase in NGL availability arising from a change to a receipt point convention might be reduced as a result of growing intra-Alberta markets. It suggested that new NGTL facilities which impact NGL availability on the NGTL System should be subjected to a NGL impact assessment. NGL impact assessments should include, but not be limited to, the impact of new facilities on NGL availability to the straddle plants. In addition to requesting the Board to direct NGTL to complete NGL impact assessments, it stated "NOVA Chemicals will work with NGTL through the TTFP to assess the system-wide, generic lean-rich gas streaming policy, but believes that regulatory oversight of the policy development process is needed by recommending the completion of the necessary protocol or guidelines dealing with the lean/rich gas policy by a date certain."²³⁸ NOVA Chemicals considered that the scope of the parties with interests in lean gas streaming would extend beyond the traditional TTFP participants.

²³⁵ Transcript Volume 11, page 1241

²³⁶ Transcript Volume 17, page 2411, lines 1-16

²³⁷ Exhibit 034-18, NGTL Opening Statement, May 26, 2008, page 4

²³⁸ NOVA Chemicals Corporation - Written Argument September 5, 2008, page 8, Section 3.6

NOVA Chemicals took the position that shippers with extraction rights would be the primary beneficiaries of lean gas streaming, but considered that they would not be the sole beneficiaries, as indicated by the following exchange with Board Counsel:

Q. And does the ability to preserve the NGL content in the stream; is that not a benefit that the petrochemical producers would be receiving?

A. MR. MIROSH: It is certainly an important thing to us, and, again, I can quibble about benefit or not, but yes.

Q. And is that something that you think petrochemical producers should contribute to the cost of?

A. MR. MIROSH: And I think they, you know, in various forms do, and I think will probably if - to the extent that there are any costs imposed on that, I'm sure they will be asked to pay some portion of those particular costs through the negotiations on the actual extraction of those products, yes.²³⁹

NOVA Chemicals cautioned that in a process to allocate cost responsibility for streaming projects, parties should be mindful that commercial arrangements may be in place to pass costs along between sectors.

NGTL disagreed with the view held by some parties that the beneficiaries of lean gas streaming initiatives are only the shippers with extraction rights, suggesting that straddle plants and petrochemical companies would also benefit from lean gas streaming.²⁴⁰ In that regard NGTL suggested that the issue of who the beneficiaries are of any lean gas streaming plan should be put to all stakeholders for discussion and resolution.

IPF/PVE considered that an NGL impact assessment of all major natural gas facility projects including lean gas streaming pipeline projects or projects directed at the intra-Alberta market which might have an impact on the straddle plant industry, should be required of the project proponent. IPF/PVE discussed their view as to the "threat to the existing NGL extraction industry caused by the marked increased forecast for intra-Alberta consumption of unprocessed natural gas. The most imminent example of this is facilitated by NGTL's proposal to build the North Central Corridor (NCC) line which is principally required to transport natural gas into the Fort McMurray area for consumption by oil sands operations."²⁴¹ IPF/PVE suggested that any negative impact of proposed projects to the NGL industry should be incorporated into the cost of the proposed project in order to obtain a true impact assessment. IPF/PVE requested that straddle plant owners receive special notification if for any reason their businesses could be impacted by a new proposal for an energy project. They also suggested that the straddle plants should receive an assessment of the plant inlet volumetric flow impact and NGL concentration impact associated with upstream project proposals. IPF/PVE proposed that assessments of the alternatives should be completed before any large volumes of unprocessed gas are diverted away from the straddle plants for intra-Alberta consumption.²⁴²

NGTL disagreed with any suggestion that NGTL should provide an NGL impact assessment with a pipeline facility proposal that could impact the straddle plants. At most, NGTL considered

²³⁹ Transcript Volume 18, page 2503

²⁴⁰ Exhibit 034-07, NGTL Rebuttal, page 67, lines 1-18

²⁴¹ Exhibit 037-02, Evidence of Provident Energy Ltd. and Inter Pipeline Fund, August 28, 2007, page 1

²⁴² Inter Pipeline Fund and Provident Energy Ltd., Written Argument, September 5, 2008, page 5 to page 6, 1

that it could provide volume and compositional information.²⁴³ NGTL did not consider that it would be in a position to quantify the cost impacts associated with stranding any NGL infrastructure. NGTL suggested that this information could only be accomplished by the straddle plants themselves. NGTL considered it would be more appropriate to continue to identify and discuss its projects within the Annual Plan and facilities approval forums.

WEG/Tenaska suggested that lean gas streaming was an important issue impacting the availability of NGL and their associated revenues. Consequently WEG/Tenaska recommended that this issue take precedence to any changes to the Current Convention.²⁴⁴ WEG/Tenaska was concerned that referring the lean gas streaming issue to the TTFP would not provide any assurances that the issue would be appropriately addressed, however they did not consider that there was enough information available on the record to determine which parties would be accountable for the costs of lean gas streaming.

IGCAA indicated it believed that the broader public interest of Alberta is best served by an economic and orderly integrated gas transmission system that, where practicable, streams lean gas to burner-tip markets and streams liquid-rich gas to extraction facilities. IGCAA indicated that it recognized that there may be situations where this is economically untenable, however it believed that an Alberta policy in this regard that encourages the development of gas transmission pipeline construction to achieve this result would be aligned with the Alberta public interest. IGCAA considered that there may be merit in dealing with specifics of lean gas streaming issues in the TTFP forum, which would benefit from any public interest and policy perspectives arising from this NGL Inquiry process.

IGCAA suggested that streaming of lean and rich gas would provide broad benefits to many participants in the energy industry, including extraction facility owners who would be able to process higher NGL content streams leading to better efficiencies and recovery rates. This in turn would be of economic benefit to those selling the extraction rights and provide more liquids to those seeking to upgrade them. Consequently, IGCAA considered the broader public interest may be well served in Alberta through avoidance of wasting resources and through heightened economic activity.

The Canadian Chemical Producers Association (CCPA) considered that without streaming of lean gas, where economically appropriate, any NGL contained in the gas stream that will supply the increased intra-Alberta demand will be burned. The CCPA concluded that this would be sub-optimal and represent a failure to address a fundamental issue of the Inquiry. The CCPA noted that the Alberta government has been explicit in identifying value added resource upgrading as an overall goal. The CCPA suggested that movement of rich gas to the intra-Alberta burner tip remains a concern and one that can benefit from the policy direction of this Board. The CCPA considered that the beneficiaries of lean gas streaming proposals should pay the costs.²⁴⁵

CAPP supported a collaborative industry process to address lean gas streaming issues due to the complexity of the issues and their implications for the gas transmission systems in Alberta. CAPP recommended that caution must be exercised with regard to lean gas streaming and noted that NGTL is an integrated system designed to move natural gas, not to stream components. CAPP considered that the consequences of segregating gas streams are complex, unpredictable and potentially very costly. In that regard CAPP suggested that there may be circumstances where streaming of rich or lean gas can be accomplished without impairing the integrity of the

²⁴³ NGTL Reply Argument, September 26, 2008, page 12-1 to 12-2

²⁴⁴ Western Export Group (WEG) and Tenaska Reply Argument, September 26, 2008, page 18

²⁴⁵ Exhibit 013-03-01, Response to BR-CCPA-3(d)

integrated system. However, such circumstances must be determined on a case-by-case basis and with the integrity of the natural gas transmission system uppermost in mind.²⁴⁶

With regard to lean gas streaming cost responsibility, CAPP noted that the CCPA and NOVA Chemicals appear to imply that the only beneficiaries of segregating rich and lean gas streams on the NGTL System would be NGTL shippers that hold the NGL extraction rights. CAPP indicated that it disagreed with this implication and noted that the beneficiaries to rich and lean gas streaming include parties who are not shippers on the gas transmission system, but who are part of the NGL value chain.²⁴⁷

The UCA concurred with the CCPA that the beneficiaries of lean gas streaming ought to pay the associated costs. The UCA supported referring the lean gas streaming issue to the TTFP wherein the UCA considered that a collaborative process could identify all beneficiaries respecting cost distribution. The UCA cautioned that, as identified by NGTL²⁴⁸ and CAPP,²⁴⁹ if streaming is accepted as being in the public interest generically and without constraints, significant costs could be added to the NGTL System.

The Amended SPG supported the streaming of lean gas away from extraction facilities where cost efficient and directing rich gas towards straddle plants. The Amended SPG considered that these opportunities should be actively investigated and examined by an industry group.

Talisman indicated that it is not supportive of lean gas streaming, because Talisman understood it would target specific supply to specific markets, thereby undermining the benefits inherent in NGTL's Common Stream.²⁵⁰ Talisman indicated it was very concerned with the facility and system costs and resultant toll impacts arising from lean gas streaming projects if these costs are administered as a rate base service. Talisman acknowledged that there may be a number of ways to address cost causality and rate impacts, and in that respect considered there may be value in referring the issues to the TTFP for possible resolution.

Shell considered that lean gas streaming should be considered, at least initially, by the TTFP or a comparable industry forum. Shell did not agree with PVE/IPF's proposal for NGL Impact Assessment. Shell considered that proposal would favour existing straddle plants while preventing other parties from undertaking competitive alternatives in response to changing pipeline system gas utilization and flow patterns. As an example, Shell suggested that increasing intra-Alberta demand may present an opportunity for straddle plants to be constructed to capture the associated NGL stream. Shell considered that the proposal to undertake NGL Impact Assessments might pre-empt a collaborative industry process to address lean gas streaming issues.

Imperial/EMC expressed a concern with the IPF/PVE request that straddle plant owners receive special notification if for any reason their businesses could be impacted by a new proposal for an energy project. Imperial/EMC considered that the existing industry notification procedures already meet this provision and would broaden special protections for the straddle plant industry in a way not contemplated in the Solex Decision. Imperial/EMC suggested there was no compelling reason for this special notification status or assessment of impacts on the straddle plants.

²⁴⁶ Exhibit 012-04, CAPP Rebuttal Evidence, November 6, 2007, pages 1 and 2

²⁴⁷ Exhibit 012-04, CAPP Rebuttal Evidence, November 6, 2007, page 2

²⁴⁸ Exhibit 034-18, NGTL Opening Statement, page 4

²⁴⁹ Exhibit 012-04, CAPP Rebuttal Evidence, November 6, 2007, pages 1 and 2

²⁵⁰ Talisman Energy Written Argument, September 5, 2008, page 2

ConocoPhillips shared the concern of Shell and Imperial/EMC. ConocoPhillips stated that it does not believe that straddle plant protectionism needs to be hard-wired into the Board's process and believes that market forces rather than protectionism should determine where facilities are located.

EnCana supported the concept of streaming lean gas away from extraction facilities and rich gas towards straddle plants to the extent that it is economic and that the benefactors are paying the costs. EnCana noted that those benefiting may include parties, like owners of straddle plants and petrochemical facilities that are not NGTL shippers.²⁵¹ EnCana concurred that the TTFP would be an appropriate discussion forum for lean gas streaming.

The ADOE indicated that the streaming of lean gas to Alberta end-use markets and richer gas to straddle plants should be encouraged and recognized as being in the public good, provided the costs do not exceed the benefits. The ADOE noted that historically, more than 90 percent of the NGL available on the NGTL System have been available to straddle plants.²⁵² The ADOE also pointed out that the issue of CBM is confined to a small geographic region in Alberta and could be dealt with using NGTL's existing collaborative process, through the TTFP.

With respect to costs, the ADOE highlighted that all parties to this Inquiry generally agreed that if significant lean gas streaming costs were incurred, those parties benefiting from the lean gas streaming should be expected to contribute towards such costs.²⁵³ The ADOE did not specifically list who those parties may be.

The Inquiry Expert noted that many parties support a collaborative process under the TTFP to deal with the issue of lean gas streaming.²⁵⁴ However, the Inquiry Expert agreed with NGTL that if this forum is used, the beneficiaries of any lean gas streaming plan would need to be identified and agreed to among the parties, and that the costs should be weighed against benefits.²⁵⁵ The Inquiry Expert was of the opinion that finding agreement from the TTFP participants will be challenging. The Inquiry Expert also expressed concern that the forum needs to be broad enough to allow parties who could be affected, but that are not traditional participants in the TTFP, to participate. The Inquiry Expert also determined that gas compositions have changed over time, and are likely to be significantly impacted if Northern Gas arrives. Caution is therefore required to ensure that discussions on lean gas streaming take into account potential impacts of new sources of ex-Alberta gas.²⁵⁶

6.2 Board Conclusions and Recommendations

The Board notes that almost all parties were supportive of the concept of lean gas streaming in the context of directing lean gas towards burner-tip markets and rich gas toward straddle plants. The Board finds that notionally, lean gas streaming has merit when the loss of NGL can be avoided, but considers caution must be exercised particularly with respect to the total cost of such projects, who pays for these costs, the socio-economic impact of a project (including the construction of duplicative facilities), and the potential impacts to the competitive position of gas sourced from the WCSB. While NGTL's principal lean gas focus in this Inquiry was in relation to CBM or other sources of lean gas, the Board considers that the principles associated with the

²⁵¹ EnCana Corporation Reply Argument, September 26, 2008, page 3, point 4

²⁵² Exhibit 034-03, NGTL's Evidence, page 7

²⁵³ ADOE Written Argument, September 5, 2008, pages 3 and 4. Lean Gas Streaming

²⁵⁴ Exhibit 049-05-01 Ziff Energy Inquiry Expert Submission part 2, November 27, 2007, page 7-36, 7.10.15 "Ziff Energy Comments"

²⁵⁵ Ibid

²⁵⁶ Ibid

lean gas streaming concept can be considered in a broader context. The concept of streaming particular flows might also make economic sense in the context of directing liquids rich gas bound for the intra-Alberta markets, where no extraction facilities presently exist, to new or existing extraction facilities prior to delivery to end-use markets.

In terms of dealing with facility applications, the Board considers that the costs and benefits of lean gas streaming associated with applications for significant facility modifications or new installations should be assessed on a case-by-case basis to ensure that the projects have merit with respect to the overall public interest.

The Board considers that, for significant projects, this case by case assessment should include an evaluation of the beneficiaries of the proposal and, if achievable, some agreement or recommendations respecting how the costs might reasonably be allocated. In this regard, the Board considers that the beneficiaries of lean gas streaming should be considered in a holistic manner, and should include all participants of the NGL value chain, including straddle plant owners and feedstock purchasers. The Board notes the following exchange (also quoted above) between Mr. Mirosh appearing for NOVA Chemicals and Board Counsel:

Q. And does the ability to preserve the NGL content in the stream; is that not a benefit that the petrochemical producers would be receiving?

A. MR. MIROSH: It is certainly an important thing to us, and, again, I can quibble about benefit or not, but yes.

Q. And is that something that you think petrochemical producers should contribute to the cost of?

A. MR. MIROSH: And I think they, you know, in various forms do, and I think will probably if - to the extent that there are any costs imposed on that, I'm sure they will be asked to pay some portion of those particular costs through the negotiations on the actual extraction of those products, yes.²⁵⁷

As NOVA Chemicals points out, however, incremental pipeline related costs associated with lean gas streaming might be simply passed on up the chain to the petrochemical producers. Accordingly, factoring in a form of direct payment of a portion of any such costs might not be necessary.

The Board notes that NOVA Chemicals and IPF/PVE fostered the concept of mandatory NGL impact assessments for new undertakings, as indicated in the following extract from the Argument of NOVA Chemicals:

NOVA Chemicals submits that NGTL's evidence in this Inquiry and the NCC proceeding on the matter of lean/rich gas streaming is compelling in respect to the need for NGTL to provide NGL impact assessments for any NGTL facility proposal that impacts NGL quantities entrained in the common stream on NGTL's system.²⁵⁸

In the Board's Information request No. 1 to PVE and IPF, a concern was raised about how to maintain a competitive NGL extraction industry as increasing volumes of gas high in ethane content is used within the province and less gas is directed to border deliveries and the border straddle plants. PVE and IPF believe that this Board or its successors should require all proponents of major natural gas facilities projects to include

²⁵⁷ Transcript Volume 18, page 2503

²⁵⁸ NOVA Chemicals Corporation, Written Argument, September 5, 2008, page 7, 3.4

an NGL Impact Assessment as a mandatory part of the materials they file with their application.²⁵⁹

This concept was opposed by a number of parties who expressed concerns including that the assessments might be expected to extend beyond their knowledge with respect to implications on the downstream industry or might be protectionist of existing straddle plants over new competitive alternatives.

The Board recognizes the importance of the NGL industry and the petrochemical industry to Alberta; however it is not prepared at this time to recommend a mandatory NGL assessment for all major lean gas streaming proposals that could impact on NGL extraction. Rather, it believes the need for and extent of such an assessment, should depend on the circumstances of each application, in particular the potential impact it may have on NGL recovery. The Board notes that NGTL suggested that it could provide volume and compositional information impacts²⁶⁰ and the Board considers this type of information should, at a minimum, be provided with each major application for facilities intended to stream lean gas.

The Board notes that most parties generally were supportive of advancing policy discussions and the development of application guidelines with respect to lean gas streaming through an industry collaborative process, such as the TTFP. Some parties cautioned, however, that the TTFP membership may be too limited and would exclude the participation of some parties who have a bona fide interest in NGL streaming projects. The Board agrees and recommends that lean gas streaming on the NGTL System be advanced through an industry collaborative process and considers that this could be facilitated most effectively via the TTFP, provided that NGTL ensures that all impacted parties who may not be members of the TTFP are invited to actively participate. The Board accepts NGTL's recommendation to have the TTFP attempt to agree on an overall approach to lean gas streaming and that it then attempt to develop guidelines and criteria for lean gas streaming. The Board recommends that the TTFP be tasked with the preparation of a report with guidelines, criteria, and implementation recommendations, including cost allocation recommendations, to be issued by April 1, 2010 and provided to the regulator for approval. The Board recommends that a subcommittee of this forum be appointed to vet specific lean gas streaming applications relating to the NGTL System for the purpose of determining on a case by case basis if they meet the recommended guidelines and criteria prior to the submission of an application for regulatory approval.

With respect to lean gas streaming on other pipelines, the Board encourages ATCO Pipelines and AltaGas Utilities to consider a similar approach to the TTFP at such time in the future as a lean gas streaming opportunity may develop.

7 CO-STREAMING AND SIDE-STREAMING

Co-streaming and side-streaming are concepts where existing under-utilized upstream gas processing facilities gain access to the Common Stream in order to extract NGL from the Common Stream. The lean residue gas is, in the case of side-streaming, injected back into the Common Stream upstream of existing straddle plants, or in the case of co-streaming, downstream of straddle plants. Parties in favour of such projects suggest that there is limited competition for extraction services in the province and in particular on the western leg of the NGTL System, and that co-streaming or side-streaming provide true competitive alternatives.

²⁵⁹ Inter Pipeline Fund and Provident Energy Ltd., Written Argument, September 5, 2008, page 3 to page 4, item 9

²⁶⁰ NGTL Reply Argument, September 26, 2008, page 12-2

Some parties considered that the issues of co-streaming and side-streaming and the appropriate extraction convention were directly related and argued that a move to a receipt point convention would reduce the desire of parties to consider such applications. The development of key criteria in order to provide clarity and direction on this issue was an element considered by the Board to be an important aspect of the Inquiry.

7.1 Views of Inquiry Participants

All participants who had an interest in the issues of side-streaming and co-streaming appeared to favour the Board considering such applications on a case by case basis. Although some participants expressed a desire that the Board not develop a list of pre-defined conditions that would need to be met, others seemed to be more explicit in what they believed should be considered as an acceptable application.

Most of the participants who had opinions on the issues of side-streaming and co-streaming indicated that competition is good and should not be unduly limited. Some expressed the view that while co-streaming may be appropriate in certain circumstances, side-streaming provided a competitive advantage to the upstream facility over the existing straddle plants and may not be in the public interest. Still other participants contended that the extraction industry was highly competitive and were opposed to either co-streaming or side-streaming in most cases as being duplicative of existing extraction facilities leading to production inefficiencies and wasting of resources with little or no competitive benefits or incremental production of NGL.

Inquiry participants differed in their views on what, if any, criteria needed to be applied to applications for side-streaming or co-streaming. Most producers expressed the view that no criteria were necessary and that the merits of each application would need to be considered on their own. In general, they felt that predefined conditions would lead to unnecessary hurdles being placed in front of applications that might otherwise be in the public interest. The Amended SPG provided specific requirements that it considered would be necessary for the Board to even consider an application. Many of the participants, producers included, felt that a side-streaming application would need to demonstrate how it could be in the public interest when it was impacting a competitive downstream extraction facility.

Some participants did not believe that the potential for a significant proliferation of side-streaming or co-streaming facilities exists. Although the Amended SPG had provided studies²⁶¹ into the sites that could potentially be converted to co-streaming and side-streaming, many of the other participants considered that the studies were flawed. Further, they contended that only two²⁶² facilities have ever been the subject of such an application suggesting that such opportunities were probably rare.

Imperial/EMC contended that side-streaming and co-streaming should be considered on their own merits as they arise.²⁶³ The development of additional extraction facilities could, in some circumstances, result in substantial competitive benefits. However, there is also a risk that reduced efficiencies could be seen at existing straddle plants which would not be in the public interest. Evaluation of a proposal on its merits is the only fair way to deal with such issues.

²⁶¹ Exhibit 042-02-05, Straddle Plant Group - Potential Candidates for Co-Streaming by Purvin & Gertz and Exhibit 042-02-07, Straddle Plant Group - Potential Candidates for Sidestreaming by Purvin & Gertz

²⁶² Strachan and Harmattan facilities

²⁶³ Written Argument of Imperial/EMC, page 14, lines 6-7

Imperial/EMC suggested that the Board should avoid setting out criteria which may prevent submission of such applications.

Imperial/EMC pointed out that the Amended SPG had not brought forward any evidence or study which described the level of competitiveness within its industry. Imperial/EMC submitted that the present levels of excess capacity at the straddle plants was not an indicator of sufficient competition, nor a reason why additional competition should not be permitted. Imperial/EMC said that the fact that there is only one extraction option for shippers on the western leg is an indicator of a lack of competition. In its Reply Argument, Imperial/EMC stated:²⁶⁴

From a market perspective, however, protecting the straddle plants from competition by potential side-streamers or co-streamers only shields the straddle plants from cost realities and possible plant inefficiencies....

Imperial and EMC believe that competition, and the inevitable rationalization among the plants to promote efficient ethane recovery, is a goal that should be striven for rather than creating the potential for greater inefficiencies by shielding the current plants within the existing convention.

Imperial/EMC noted that competition would allow all stakeholders in the ethane marketplace to benefit, rather than just the current extraction facility operators.²⁶⁵

Imperial/EMC described Alberta as the relevant market for ethane given that it is largely consumed within the province and that ethane is not fully integrated with the rest of the North America market as suggested by the Amended SPG.

Imperial/EMC pointed out that reliance on the Solex Decision by IPF/PVE for the applicable criteria was inappropriate as circumstances have evolved and continue to do so. Setting out guidelines would be overly restrictive and would not take into consideration the issues of the day. Imperial/EMC opposed the idea put forth by the Amended SPG regarding adoption of guidelines, as they diminish opportunities for competition and perpetuate the status quo. Imperial/EMC suggested that it was more appropriate to allow the relevant criteria to evolve with time.

Imperial/EMC pointed out that the evidence showing a potential flood of side-streaming and co-streaming applications was undermined by testimony of Taylor^{266 267} that it saw only two opportunities for co-streaming.

NOVA Chemicals also recommended that the Board should have regard for all relevant factors when examining applications on a case by case basis. The Board should examine the applicable factors, but the significance of those factors could change with each application. The use of a prescribed set of criteria could reduce the flexibility of the Board's processes.

NOVA Chemicals stated that the list of criteria outlined in the Amended SPG submission for approving or denying side-streaming or co-streaming was not strongly supported by evidence. The listed criteria were not minimum requirements, but more statements of issues or factors that would need to be weighed in determining the public interest of a particular application. NOVA Chemicals suggested that applications for side-streaming or co-streaming are not frivolous submissions and deserve due consideration by the Board without criteria that may unduly limit potential projects as proposed by the Amended SPG.

²⁶⁴ Reply Argument of Imperial/EMC, page 8, lines 3-5 and 16-17

²⁶⁵ Ibid, page 9, lines 9-11

²⁶⁶ Reply Argument of Imperial/EMC, page 8, lines 20-22

²⁶⁷ Transcript Volume 26, page 4030, lines 4-22

NOVA Chemicals indicated that the Purvin & Gertz studies²⁶⁸ supported by the Amended SPG on potential co-streaming or side-streaming facilities did not consider which plants currently had turboexpanders and what the difference was between plant capacity and NGL extraction capacity. Use of available plant capacity as an indicator of potential for co-streaming or side-streaming was misleading. It further pointed out that proximity to a NGTL lateral line for co-streaming or side-streaming was also misleading in assessing potential candidates as the gas in those laterals had not been assessed for composition.

NOVA Chemicals concluded that the Purvin & Gertz studies supported²⁶⁹ by the Amended SPG provided little value for the Board. Although it shows that significant surplus capacity exists at plants with turboexpanders, only one such plant has ever made an application to co-stream. The evidence for a flood of side-streaming and co-streaming applications was not credible.²⁷⁰

Shell expressed its view that co-streaming allows for competition on a level playing field, should be evaluated on a case by case basis and should not be restricted. Regarding side-streaming Shell suggested that a proposal which results in leaning of a common stream to an existing extraction facility should be treated differently.

Shell believes competition should be encouraged to ensure the industry is efficient and competitive. The NGL convention recommended by the Board should not preclude co-streaming in order to sustain a nonviable or uncompetitive extraction facility. Shell did not generally support side-streaming. Restrictions on side-streaming are necessary to ensure the viability of the existing straddle plants. Shell stated that:²⁷¹

Side-streaming, except in very specific circumstances, opens the door to a very inefficient and under-utilized straddle plant industry that will not be beneficial to the extractors or the Alberta public.

ConocoPhillips indicated that although it was generally against side-streaming, it felt it would be necessary to examine the issue on a case by case basis. ConocoPhillips argued against straddle plant protectionism which would become part of the Board's processes if NGL impact assessments were a requirement. Market forces should be the determining factor.

EnCana pointed out that the straddle plants opposed both the Strachan and Solex competitive extraction facilities and the financial regulation of the existing straddle plants. The introduction of competition, particularly at Cochrane, is required to ensure shippers get fair value for their NGL. In its Reply Argument EnCana observed that:²⁷²

The straddle plants ought not to be able to avoid regulation and constrain competition too.

Taylor suggested that future applications for co-streaming should be assessed on a case by case basis. Due to geographic location and plant design, each application would be different and could only be considered on a case by case basis. Taylor believed that the Board does not need to

²⁶⁸ Exhibit 042-02-05, Straddle Plant Group - Potential Candidates for Co-Streaming by Purvin & Gertz and Exhibit 042-02-07, Straddle Plant Group - Potential Candidates for Sidestreaming by Purvin & Gertz

²⁶⁹ Exhibit 053-085, Appendix 1 List of Supported Evidence details which submissions the Amended SPG continued to support. The referenced Purvin & Gertz reports (Exhibits 042-02-05 and 042-02-07) were included in the list.

²⁷⁰ Written Argument of NOVA Chemicals, Section 4.9, page 15

²⁷¹ Final Argument of Shell Group Section 5.0, page 25

²⁷² Written Reply Argument of EnCana Corporation, page 3, paragraph 3

create specific policy guidelines or restrictions on co-streaming given that the public interest issues are already defined in prior decisions.

Taylor argued that parties supportive of co-streaming do so because they believe in fair competition to allow the market players to act on business decisions. It said that the Board should be cautious in implementing guidelines or policies which have an "inadvertent effect of interfering with free market considerations" and should not apply regulation to commercial decisions.²⁷³ In reply to a position put forward by the Amended SPG, Taylor indicated that the competition for its Taylor plant in British Columbia is the Alliance pipeline where shippers are compensated for gas with higher heat content as compared to the extraction facility at Cochrane where there were no competitive options.

Taylor believed that no new criteria or requirements are needed. Prior decisions and Directive 056 provide all the direction required. All plants have unique characteristics which make it impractical for the Board to specify common rules related to proliferation.²⁷⁴ Taylor stated that it is up to the Board to balance important considerations from Directive 056, such as environmental and landowner impact, with market considerations when considering such an application. It added that the use of a net social benefit, as used in the Wright Mansell report²⁷⁵ has limited use in analyzing an application and is only one thing the Board might consider on an application. Further, they expressed concern about the use of the Purvin & Gertz studies supported by the Amended SPG into side-streaming and co-streaming. Any stipulations that the Board does add as a result of this Inquiry should not have the potential of causing any interference with free market considerations. Taylor suggested that the only considerations that the Board might want to apply would be that a co-stream applicant must process raw gas in preference to co-stream gas and it must also have ethane extraction capability. This functionally limits the number of plants that might be considered for co-streaming.

Taylor noted that the MacMurchy evidence,²⁷⁶ filed on behalf of the Amended SPG, appeared to advocate different rules for co-streaming plants versus existing straddle plants. It also suggested that Mr. MacMurchy's recommended criteria may not be necessary in all cases. Taylor also indicated that because a co-stream applicant would not be able to acquire information deemed confidential by the straddle plant, the implication is that the straddle plant should have to provide evidence to demonstrate potential harm.

Taylor indicated that the Amended SPG Argument that a proliferation of co-stream facilities was on the horizon did not consider plant design and access to pipelines for gas and NGL product transportation as significant factors.²⁷⁷ It stated that operational limitations may make it impractical or uneconomic for a plant on the list to co-stream. Taylor noted that its suggestion that only Harmattan and Jumping Pound represented real opportunities for co-streaming was not seriously challenged^{278, 279} and questioned the need to provide any policy guidance when a flood of applications was not very likely.

Although the ADOE indicated it was not generally supportive of side-streaming, it acknowledged that there are potential circumstances where it could be appropriate. Such

²⁷³ Written Argument of Taylor NGL Partnership, page 11, lines 3-9

²⁷⁴ Ibid, page 2, lines 14-16

²⁷⁵ Exhibit 042-02-02, Straddle Plant Group - Economics of Gas Reprocessing in Alberta by Wright Mansell Research Ltd

²⁷⁶ Exhibit 042-02-08, Straddle Plant Group - Evidence of Norman E. MacMurchy

²⁷⁷ Written Argument of Taylor NGL Partnership, page 6, lines 2-6

²⁷⁸ Exhibit 044-05-01, Taylor Rebuttal Evidence to P&G Co-streaming Report, page 2, lines 8-22

²⁷⁹ Written Argument of Taylor NGL Partnership, page 6, line 22 to page 7, line 4

applications should be considered on their merits with a heavy onus on showing them to be in the public interest. ADOE contended that it may be appropriate to approve co-stream plants, provided that they process raw gas in preference to co-stream gas, recover ethane, and provide a healthy competitive alternative to existing straddle plants.²⁸⁰

The Amended SPG stated that the extraction industry was highly competitive. It also suggested that side-streaming and co-streaming should be examined on a case by case basis and that the Solex and Strachan Decisions provide principles that should be applied. The Amended SPG suggested that development of additional regulatory guidelines would help reduce applications that are outside of established public interest expectations. Those requirements start with a demonstration of need and support for a project.

The Amended SPG contended that conversion of field plants to include reprocessing does not increase the competitiveness of existing markets nor the efficiency, value or amount of NGL extracted and upgraded in the province. Rather, these conversions result in an unwarranted consumption of valuable resources and a redistribution of reprocessing capacity. The Amended SPG said that competition is demonstrated by multiple options available to shippers. Shallow and deep cuts can be done in the field and producers can make arrangements for upstream extraction with a plant operator. Producers also may have the option of transporting their gas on a pipeline other than NGTL or choose to ship and hold export delivery service or they can negotiate with the export delivery shipper for the uplift value in a sales contract. Lastly, producers may elect to sell their gas directly to an intra-Alberta consumer. Producers, therefore make an economic decision on whether or not to realize direct value from their NGL.

The Amended SPG stated that straddle plants compete with the field plants for the right to extract NGL. Some 50 percent of all NGL, mostly the heavier highest value products, are extracted prior to being put into the Common Stream.²⁸¹ Straddle plants compete with one another for the right to process gas. All straddle plant operators and owners are free to compete with one another to contract for the right to extract NGL.²⁸²

The Amended SPG noted that Taylor implied that there must be more than one plant co-located with others for competition to exist. It said Taylor's evidence was contradictory given that its Taylor British Columbia facility is the only existing plant at that location.

According to the Amended SPG, parties that suggested lack of competition have a misinformed and incomplete view of the integrated nature of the market. Straddle plant products compete in the downstream market over all of North America. Buyers can choose to acquire supply from areas other than Alberta and plants in the Gulf Coast compete with Alberta plants.²⁸³ Adding more options to the existing ones will not enhance the amount of NGL recovered or its value.²⁸⁴

The Amended SPG did not suggest that side-streaming or co-streaming be automatically disallowed but stated:²⁸⁵

The Amended SPG Group supports the examination of co-streaming and side-streaming projects on an individual project basis.

²⁸⁰ ADOE Final Argument Submission, section 5, page 3

²⁸¹ Argument of ATCO Midstream, BP Canada, Inter Pipeline Fund and Spectra Energy Empress L.P.(the Amended SPG), page 20, paragraph 55

²⁸² Ibid, page 21, paragraph 56

²⁸³ Ibid, page 22, paragraph 60 and page 23, paragraph 61

²⁸⁴ Ibid, page 24, paragraph 63

²⁸⁵ Ibid, page 24, paragraph 64

The Amended SPG suggested that the Board identify detailed guidelines of what would and would not be in the public interest so that applicants would understand what issues the Board would be considering. Development of such regulatory guidelines would help eliminate applications outside of basic benchmarks. Evidence prepared on behalf of the Amended SPG by Mr. MacMurchy identified that need and support are the minimum basic requirements that would be expected for a new extraction facility on NGTL.²⁸⁶ As an example of need, he referred to insufficient straddle plant capacity to process gas flowing to export or not flowing where existing straddle plants exist (intra-Alberta). The evidence indicated that the Board should have clear policy and applications should be denied unless they can demonstrate that they will:²⁸⁷

- not result in unnecessary proliferation;
- not result in decreased net NGL extraction or increase net energy use per unit of NGL extracted, and/or result in greater land use or environmental impact;
- optimize energy efficiency;
- not give undue preferential access to richer stream;
- provide net economic benefit to the province;
- follow the same contracting conventions as other straddle plants; and
- not increase cost of NGL to petrochemical producers.

The Amended SPG requested that the Board establish direction on issues related to side and co-streaming such as:²⁸⁸

- clear rules and procedures,
- minimization of proliferation of NGL extraction facilities that may result in reduced net NGL extraction or increased energy use per unit of NGL extracted provincially, or greater land use/environmental impact,
- optimization of energy efficiency of NGL extraction,
- maintenance of long term viability of extraction and petrochemical industries, and
- provision of net positive economic value provincially, for new or amended facilities.

Purvin & Gertz prepared a report on behalf of the Amended SPG and filed with the Inquiry on Potential Candidates for Co-Streaming.²⁸⁹ This report was a follow-up to the Potential Candidates for Side-streaming²⁹⁰ study also done by Purvin & Gertz for the 2003 Solex proceeding. The co-streaming report noted that as most gas processing plants in Alberta are operating below capacity, the economic incentive to pursue gas from NGTL to co-stream would become more compelling as raw gas production continues to decline. Approval by the Board of co-streaming (or side-streaming) reduces the incentive to process raw gas and encourages more such applications. The co-streaming report looked at the potential for direct bypass of straddle plants (similar to the Taylor proposal at the Harmattan gas plant) and indirect bypass.²⁹¹ It suggested that the impact of co-streaming would exacerbate the existing declining input situation at all of

²⁸⁶ Ibid, page 25, paragraph 66

²⁸⁷ Exhibit 042-02-08, Straddle Plant Group - Evidence of Norman E. MacMurchy, page 13, lines 18-30

²⁸⁸ Ibid, page 13, lines 2-16

²⁸⁹ Exhibit 042-02-05, Straddle Plant Group - Potential Candidates for Co-Streaming by Purvin & Gertz

²⁹⁰ Exhibit 042-02-07, Straddle Plant Group - Potential Candidates for Sidestreaming by Purvin & Gertz

²⁹¹ Exhibit 042-02-05, VI-1. Indirect bypass was defined as taking delivery of gas from one pipeline system, removing the liquids and delivering residue gas into another pipeline system

the straddle plants. Costs would increase and impact the petrochemical industry, ultimately resulting in wealth reduction provincially.

In development of the list of potential plants that could pursue either a direct and indirect bypass co-streaming opportunity, Purvin & Gertz assessed spare licensed capacity, plant design, access to pipeline gas, and NGL product transportation. The report identified four plants with a potential for direct bypass and another 28 that could be indirect bypass candidates with some level of modification. Together the side-streaming report and the co-streaming report identified the high end potential for upwards of 60 existing field plants as having the potential for conversion to side-streaming or co-streaming facilities. The co-streaming report was also referenced in the Wright Mansell report on the Economics of Gas Reprocessing in Alberta²⁹² (Wright Mansell Report) where an economic analysis was done on a few examples of potential co-stream sites.

The Amended SPG expanded on its view of the current over capacity situation, identifying that straddle plants are currently operating at less than two-thirds capacity.²⁹³ Continual decline in WCSB gas production will see that usage decline further. The Amended SPG contended that additional extraction, done through side-streaming or co-streaming plants would result in further reduction in straddle plant usage and greater unit ethane cost. The Amended SPG also stated that instead of additional extraction capacity being added in the system, rationalization of existing facilities would likely be necessary to ensure the efficient and orderly development of provincial resources.

In reply to Taylor, the Amended SPG contended that Taylor's suggested restrictions (raw gas processing and ethane recovery) are useful but insufficient. All of the candidate plants identified by the Purvin & Gertz studies are pursuing raw gas yet still have under capacity problems. Co-stream and side-stream plants would be able to access sufficient gas from the NGTL System to fill their plants while the straddle plants, outside of plant rationalization are unable to add additional supply. As a consequence, co-streaming and side-streaming will exacerbate an already difficult and declining supply issue for the straddle plants.

The Amended SPG contended that NOVA Chemicals criticism of the Purvin & Gertz studies on side-streaming and co-streaming lacks value because the Board was not persuaded in rendering the Solex Decision by similar arguments made against the side-streaming study filed in that proceeding. Further, the purpose of the studies was to evaluate the potential for side-streaming and co-streaming, not to consider the complete technical details of each potential plant.

The Amended SPG submitted that NOVA Chemical's suggestion that the Wright Mansell Report on the Economics of Gas Reprocessing²⁹⁴ should be largely discounted based upon its reliance on the Purvin & Gertz study, did not recognize the usage of that study by Dr. Mansell. Although it was referred to in a small section of his report, Dr. Mansell only conducted an analysis of a representative sample of those plants that would be in a good position to co-stream gas from NGTL. His objective was to assess the net social benefit of some potential plant conversions on issues identified in the EUB's Inquiry Final Scoping Document. NOVA Chemicals did not

²⁹² Exhibit 042-02-02, Straddle Plant Group - Economics of Gas Reprocessing in Alberta by Wright Mansell Research Ltd.

²⁹³ Argument of ATCO Midstream Ltd., BP Canada, Inter Pipeline Fund and Spectra Energy Empress L.P. (the Amended SPG), paragraph 44, page 17

²⁹⁴ Exhibit 042-02-02, Straddle Plant Group - Economics of Gas Reprocessing in Alberta by Wright Mansell Research Ltd.

question either his methodology or the conclusions and so this evidence should be given full consideration.

The Wright Mansell Report considered and evaluated five cases of co-streaming in contrast with the Cochrane Ethane Recovery Project. These included the conversion of Harmattan, as proposed by Taylor; a modification to the Kaybob South 3 plant to include co-streaming; a combination of co-streaming at Jumping pound and Harmattan; a combination of co-streaming at Balzac and Harmattan; and finally a combination of co-streaming at Caroline and Ricinus in addition to Harmattan. The report identified a net social benefit (or cost) on a provincial level for each of these cases. The focus was on co-streaming as it is more likely to provide a net social benefit than would side-streaming. If under analysis, co-streaming proposals were not able to demonstrate a positive net social benefit, it would be even less likely that side-streaming could be shown to be in the public interest. Only the Cochrane Ethane Recovery Project case demonstrated a net positive social benefit.

IPF/PVE submitted that it fully supported the Board's position taken in the Solex Decision.²⁹⁵ More precisely, they specified their support for the statement "...maintaining the viability of the straddle plant industry as a whole continues to be in the public interest"²⁹⁶ and that preserving "...the viability of the current straddle plant system..." was a principal objective for the Board.²⁹⁷ IPF/PVE indicated that it is in the public interest to maintain the viability of that industry and recognize that it faces new threats. IPF/PVE proposed the use of an NGL Impact Assessment for any major natural gas project, which had the effect of diverting liquids rich gas away from the border extraction facilities. Although in evidence, it did not tie the need for such an assessment to side-streaming or co-streaming, IPF/PVE indicated that it would be applicable when questioned by Shell.²⁹⁸ IPF/PVE described that the factors considered in the Solex Decision²⁹⁹ would form the nexus for the impact assessment and it would also contain details of the benefit or detriment caused to the NGL industry.³⁰⁰

The Inquiry Expert identified in its Report³⁰¹ that it was not supportive of side-streaming due to negative impact of reduced NGL content to downstream straddle plants and the potential for unnecessary proliferation. The Inquiry Expert compared the co-streaming scenario with how the plants are configured at Empress currently and suggested that a case by case assessment of a co-streaming application would be appropriate. The Inquiry Expert suggested that the lack of options for producers getting value for their liquids would be the driving motivation for co-streaming applications and that they would be less likely to be proposed if a receipt point convention were to be adopted.³⁰²

The Inquiry Expert identified a series of factors and suggested that the Board should compel applicants for such projects to address and provide evidence on the following public interest considerations:³⁰³

1. impact on Alberta natural gas and NGL reserve recovery and production,
2. impact on Alberta straddle plants and petrochemical industry,

²⁹⁵ Exhibit 001-08-04, Solex Decision, Section 8.3

²⁹⁶ Ibid, Section 10

²⁹⁷ Argument of Inter Pipeline Fund and Provident Energy Ltd., page 1, paragraph 3

²⁹⁸ Transcript Volume 30, page 4695, lines 19-25 and page 4696, lines 1-4

²⁹⁹ Exhibit 001-08-04, Solex Decision

³⁰⁰ Argument of Inter Pipeline Fund and Provident Energy Ltd., pages 3-6, sections 8-11

³⁰¹ Exhibit 049-05-01, Ziff Energy Inquiry Expert Submission Part 2

³⁰² Transcript Volume 8, page 884, lines 11-20

³⁰³ Exhibit 049-05-01, Ziff Energy Inquiry Expert Submission Part 2, Section 8.2.9, page 8-12, lines 7-14

3. impact on NGL markets,
4. analysis of net provincial benefits,
5. minimization of plant proliferation, and
6. optimization of the energy efficiency of NGL extraction.

7.2 Board Conclusions and Recommendations

None of the participants in the Inquiry specifically requested that the Board totally prohibit co-streaming or side-streaming. Participants from the producer segment of the industry, who were generally in support of changing the extraction convention, were also generally in favour of dealing with co-streaming and side-streaming applications on a case by case basis. Overall, they were supportive of the concept of co-streaming without ruling out side-streaming, and pointed to the need for competition to the existing straddle plant industry as the principal reason for that support. They contended that such facilities could offer competitive opportunities without unfairly impacting the existing straddle plants and their viability. At the same time, most recognized that co-streaming had a definite advantage over side-streaming in that the latter was more likely to impact on the existing straddle plants and be less efficient.

Those participants generally involved with the existing straddle plant system took the position that co-streaming and side-streaming should not be allowed to seriously impact the viability of the existing system. They argued that the straddle plant industry was already competitive and supported the establishment of stringent criteria to ensure against the proliferation of co-streaming and side-streaming facilities and resulting serious impacts on the existing industry.

Regarding the issue of competition, the Board notes the position of the Amended SPG and others that the industry was quite competitive.³⁰⁴ This evidence does not persuade the Board to recommend an outright prohibition with respect to either co-streaming or side-streaming on the basis that sufficient competition already exists.

Concerns were also raised that a significant number of plants on the NGTL System could be candidates for either side-streaming or direct/indirect co-streaming conversion. Taylor on the other hand, indicated that only two such plants were practically capable of such a co-streaming opportunity. The Board is of the view that there is likely limited economic potential for proliferation of co-streaming and side-streaming as evidenced by the very few applications of this type that have been filed to date. The assessment of co-streaming and side-streaming plants by Purvin & Gertz was done on a relatively high level, with few criteria³⁰⁵ and, as noted by Taylor excluded or did not properly consider other important factors such as plant design and access to pipelines for gas and liquid product transportation. The assessment also used information that may have had inaccuracies.³⁰⁶ The study appeared to be a general assessment of plants that had an inlet capacity that met the criteria and may be reasonably positioned for such conversion. It was acknowledged that the level of detail in the study did not allow for an assessment of which plants represented the most probable conversion opportunities, as discussed

³⁰⁴ Argument of ATCO Midstream, BP Canada, Inter Pipeline Fund and Spectra Energy Empress L.P. (the Amended SPG), page 19, paragraph 51-63

³⁰⁵ Exhibit 042-02-07, Straddle Plant Group - Potential Candidates for Sidestreaming by Purvin & Gertz, Section I, page 1 and Exhibit 042-02-05, Straddle Plant Group - Potential Candidates for Co-Streaming by Purvin & Gertz, Section I, page 1

³⁰⁶ Argument of Taylor NGL Partnership, page 6, lines 2-21

in the following extract from the transcript where the SPG Expert Panel³⁸⁷ was being cross-examined by counsel for the Board:³⁸⁸

Q. Sir, did you do any more in-depth analysis in terms of trying to assess which of the 52 plants are the most realistic to pursue one of these opportunities?

A. MR. GOOBIE: I didn't go into a great amount of detail trying to do that. As discussed yesterday with Ms. Ho, there are many, many factors that affect all of these facilities. Every one is unique.

In the time available and given the amount of work that I did, that was not really a practical type of analysis to do. Certainly, every one of them if they were going to evaluate whether to become a co-stream or side stream, I would expect would go through all of that kind of analysis; and the important point is each one is unique; each one has a number of parameters that would affect the economics of that particular case.

Additionally, the Board believes the recommended change to the Current Convention could act as a disincentive to co-streaming and side-streaming applications. The Board also notes that the Inquiry Expert expressed the view that the lack of options for producers to get value for their NGL under the Current Convention would be a driving force in development of co-streaming and side-streaming proposals. This was not a universal view as illustrated by the fact that Taylor saw its proposed conversion of the Harmattan plant as a valid competitive alternative regardless of which extraction convention was in place. To emphasize this, it chose not to address the contracting convention in this proceeding, stating it was prepared to work with whichever party had the rights to the NGL in the Common Stream in putting forward its co-stream application.³⁸⁹

In summary, the Board does not anticipate that a large number of applications for co-streaming and side-streaming are likely to come forward. It is not prepared to recommend a prohibition of such facilities for that reason alone.

Rather than recommending that all co-streaming or side-streaming facilities be disallowed, the Board is of the view that the appropriate approach is to assess each individual application on its own merits having regard for NGL recovery implications, potential effects on other facilities, including the straddle plants, and other elements of the public interest. Also, the Board does not view it as appropriate at this time to set out a prescriptive list of criteria that might create barriers to projects that might be in the overall public interest. This is primarily because the Board believes it impossible to foresee all future circumstances that might exist at the time of an application and which might influence whether or not a proposal is in the public interest. However, the Board does consider that the substantial body of evidence and argument provided during the Inquiry on the issues of co-streaming or side-streaming without the need to consider the specific circumstances of a particular application, puts the Board in the unique position to provide some general recommended guidance to assist both potential applicants and interveners. Accordingly, the Board suggests that in addition to any specific application requirements established from time to time by the regulator, the following general factors should be addressed in any future co-streaming or side-streaming application.

- **The availability of existing unused processing capacity at the straddle plants.** The existence of unused processing capacity at the straddle plants would make an application to

³⁸⁷ The members of the SPG Expert Panel included M. Drazen, R. Mansell, G. Goobie and N. MacMurchy. Evidence and cross-examination of the SPG Expert Panel can be found in Transcript Volumes 21, 22, 23 and 24 (Transcripts 3037 through 3642)

³⁸⁸ Transcript Volume 24, page 3520, lines 6-17

³⁸⁹ Exhibit 044-04, Response to BR-TAYLOR 1 (b), page 6

construct a new greenfield facility to co-stream, and particularly to side-stream, unlikely to be supportable in the public interest.

- **Availability of processing capacity for raw gas production.** Field plants were constructed to process raw gas and should continue to provide processing service for raw gas production in the supply area to support efficient recovery of gas reserves. The Board considers it important that co-streaming or side-streaming at field plants not impair the availability of processing capacity for raw gas produced in the plant's supply area and consequently views that such plants should provide preferential access for processing raw gas relative to Common Stream gas.
- **Resource conservation and effective utilization of resources.** This requires forecasting of gas supply and throughput on the relevant sections of the NGTL System in order to predict the impact of the project on total NGL recovery. The impact on the recovery of certain NGL, particularly ethane, would be particularly important given its role as feedstock to the petrochemical industry. The Board would be concerned if co-streaming or side-streaming projects resulted in significant negative impacts on overall Alberta ethane and propane plus NGL recovery. While the Board is not prepared to recommend specific minimum ethane and propane plus NGL recovery factors for proposed co-streaming and side-streaming projects, it considers that any such proposal should incorporate significant ethane recovery capability in addition to propane plus NGL extraction. The Board suggests that applications for co-streaming and side-streaming include a discussion on design NGL recovery levels, as well as on potential impacts on overall Alberta ethane supply and overall NGL recovery. That discussion should take into consideration the planned recovery of ethane and other NGL by the proposed project as well as a discussion of the anticipated implications for recoveries at downstream straddle plants. The net impact on the overall energy efficiency including consumption of energy use per unit of NGL extracted provincially should also be addressed.
- **The impact on the existing straddle plant system.** The Board has an interest in seeing that the viability of the existing NGL extraction infrastructure is maintained. Therefore, the impact of a co-streaming or side-streaming conversion proposal on existing NGL extraction facilities must be understood. In terms of impact on the existing system, side-streaming would create a more significant negative impact by reducing the liquid content of the gas in the Common Stream available for reprocessing at downstream straddle plants. The Board is of the view that, absent extraordinary circumstances, applicants for side-streaming projects would be challenged to demonstrate significant positive public interest elements of the application relative to the negative implications of reduced Common Stream NGL content available for reprocessing at straddle plants. In short, given the greater potential for side-streaming applications to impact existing straddle plants, and perhaps the recovery of NGL, the Board considers that side-streaming applications are unlikely to be in the public interest.
- **Unnecessary proliferation of facilities.** The Board continues to be concerned with the social, land use and environmental impacts of new and expanded facilities and pipelines. The Board is of the view that co-streaming and side-streaming proponents should assess opportunities to avoid or minimize impacts by using existing facilities and pipelines and include the assessment in related applications.
- **Real meaningful competition.** The Board is supportive of competition, and meaningful competition would be a primary reason for allowing co-streaming or side-streaming to occur. However, projects that would simply transfer a function from one facility and party to another, and not provide meaningful competition, might be questionable.

- **Support from the industry.** Co-streaming and side-streaming applications should demonstrate sufficient industry support to ensure that the proposed project would be viable.

8 SUMMARY OF BOARD CONCLUSIONS AND RECOMMENDATIONS

The Inquiry was initiated to consider NGL extraction issues and emanated from the Board's responsibilities to provide for the economic, orderly and efficient development and conservation of Alberta's natural resources in the public interest. The Board's clear jurisdiction in this endeavor was a sufficient basis for the Board to complete the Inquiry and to make recommendations relating to the matters before it.

The following sections summarize the recommendations made throughout this Decision.

8.1 NGL Extraction Conventions

The Board has concluded for the reasons stated above, that a transition from the Current Convention to a receipt point convention, and specifically the NEXT Model, is warranted to address existing inequities associated with the Current Convention. The primary such inequity is the inability of receipt shippers to obtain value for the extraction rights to the Common Stream without also becoming export delivery shippers. The Board has also determined that similar changes may be warranted with respect to ATCO Pipelines and AltaGas Utilities. Accordingly the Board makes the following recommendations.

- The Board recommends that the Current Convention be replaced by the inclusion of the NEXT Model (amended to take into consideration the findings of this Decision) in the NGTL tariff within three years.
- The Board recommends that, prior to filing an application to implement the NEXT Model, NGTL discuss the following matters with its stakeholders with a view to streamlining subsequent regulatory consideration:
 - amendments to the NEXT Model to take into consideration the findings of the Board;
 - enhancements to the NEXT Model, including measures to facilitate the development of an extraction rights market and to provide for the ability to take-in-kind;
 - implementation procedures;
 - tariff amendments; and
 - regulatory application specifics.
- The Board recommends that ATCO Pipelines discuss the continuing appropriateness of its current extraction tariff with its customers and make application for regulatory approval of any amendments that may result from this discussion.
- The Board recommends that AltaGas Utilities review with its stakeholders the continuing appropriateness of its current extraction tariff in the event that straddle plants may be constructed on its pipeline system.
- The Board recommends that NGTL should take immediate steps to encourage the development of a competitive, transparent NGL extraction rights market. These steps would include consultation with stakeholders, including the ADOE, the TTFP and the straddle plants, aimed at fostering an electronic marketplace for extraction rights and the development

of the necessary commercial mechanisms or trading vehicles that may be necessary for its success.

- The Board recommends that NGTL should conduct a confidential survey of stakeholders in the extraction rights market two years following the implementation of the NEXT Model to determine whether the developing market achieves the goal of providing a competitive, transparent marketplace for the trading of extraction rights and in particular that it provides producers who are not receipt shippers with the opportunity to negotiate value for their NGL separate and apart from their energy value. NGTL should compile and analyze the survey results and file this information together with any recommendations for adjustments with the appropriate regulator(s).

8.2 Lean Gas Streaming

The Board has concluded that lean gas streaming has merit when the consumption of NGL at the burner tip can be avoided through economic lean gas streaming solutions where cost accountability is appropriately addressed. Therefore the Board recommends that:

- lean gas streaming on the NGTL System be advanced through an industry collaborative process and considers that this could be facilitated most effectively via the TTFP, provided that NGTL ensures that all impacted parties who may not be members of the TTFP are invited to actively participate;
- the TTFP be tasked with the preparation of a report with guidelines, criteria, and implementation recommendations, including cost allocation recommendations, to be issued by April 1, 2010 and provided to the regulator for approval; and
- with respect to lean gas streaming on other pipelines, the Board encourages ATCO Pipelines and AltaGas Utilities to consider a similar approach to the TTFP at such time as a lean gas streaming opportunity develops.

8.3 Co-Streaming and Side-Streaming

The Board is of the view that the appropriate approach with respect to co-streaming or side-streaming is to assess each individual facility application on its own merits having regard for NGL recovery implications, potential effects on other facilities, including the straddle plants, and other elements of the public interest.

The Board does not view it as appropriate to set out a prescriptive list of criteria that might create barriers to projects that might be in the overall public interest. However, the Board recommends some general guidance to assist both potential applicants and interveners in the form of the following general factors that should be addressed in any future co-streaming or side-streaming application in addition to any specific application requirements established from time to time by the regulator.

- The existence of unused processing capacity at the straddle plants would make an application to construct a new greenfield facility to co-stream, and particularly to side-stream, unlikely to be supportable in the public interest.
- Co-streaming or side-streaming at field plants should not impair the availability of processing capacity for raw gas produced in the plant's supply area and, consequently, such plants should provide preferential access for processing raw gas relative to Common Stream gas.

- Co-streaming and side-streaming proposals should incorporate significant ethane recovery capability in addition to propane plus NGL extraction. Related applications for co-streaming and side-streaming should include a discussion on design NGL recovery levels, as well as on potential impacts on overall Alberta ethane supply and overall NGL recovery. That discussion should take into consideration the planned recovery of ethane and other NGL by the proposed project as well as a discussion of the anticipated implications for recoveries at downstream straddle plants. The net impact on the overall energy efficiency including consumption of energy use per unit of NGL extracted provincially should also be addressed.
- The impact of a co-streaming or side-streaming conversion proposal on existing NGL extraction facilities must be understood. In terms of impact on the existing system, side-streaming would create a more significant negative impact by reducing the NGL content of the gas in the Common Stream available for reprocessing at downstream straddle plants. The Board is of the view that, absent extraordinary circumstances, applicants for side-streaming projects would be challenged to demonstrate significant positive public interest elements of the application relative to the negative implications of reduced Common Stream NGL content available for reprocessing at straddle plants. In short, given the greater potential for side-streaming applications to impact existing straddle plants, and perhaps the recovery of NGL, the Board considers that side-streaming applications are unlikely to be in the public interest.
- Co-streaming and side-streaming proponents should assess opportunities to avoid or minimize social, land use and environmental impacts associated with unnecessary facilities proliferation by using existing facilities and pipelines and include the assessment in related applications.
- Meaningful competition would be a primary reason for allowing co-streaming or side-streaming to occur. Projects that would simply transfer a function from one facility and party to another, and not provide meaningful competition, might be questionable.
- Co-streaming and side-streaming applications should demonstrate sufficient industry support to ensure that the proposed project would be viable.

Dated in Calgary, Alberta on February 4, 2009.

ALBERTA ENERGY AND UTILITIES BOARD

(original signed by)

B. T. McManus, Q.C.
Presiding Member

(original signed by)

Carolyn Dahl Rees
Member

(original signed by)

Gerry DeSorcy
Acting Member

APPENDIX 1 – HEARING PARTICIPANTS

Name of Organization (Abbreviation) Counsel or Representative (APPLICANTS)	Witnesses
Alberta Department of Energy (ADOE) C.J.C. Page C. King	
Alberta Ethane Gathering System L.P. (AEGS) B. Moore	
Alliance Pipeline Ltd. (Alliance Pipeline) L. Keough A. Sears	
AltaGas Ltd. (AltaGas) B. Ho	
AltaGas Utilities Inc. (AltaGas Utilities) Not Represented	
Amended Straddle Plant Group (Amended SPG) - ATCO Midstream Ltd. - BP Canada Energy Company - Inter Pipeline Fund - Spectra Energy Empress L.P. D. Holgate A. Hollingworth H. Tanaka L. E. Smith	M. Drazen R. Mansell G. Goobie N. MacMurchy P. Murphy D. Moe M. Dever
ATCO Midstream Ltd. (ATCO Midstream) L. E. Smith A. Sears	
ATCO Pipelines S. Munro	
Aux Sable Canada Ltd. (AUX Sable) D. Davies	

Name of Organization (Abbreviation) Counsel or Representative (APPLICANTS)	Witnesses
BP Canada Energy Company (BP) D. Holgate	
Canadian Association of Petroleum Producers (CAPP) R. Fairbairn	
Canadian Chemical Producers' Association (CCPA) D. Podruzny A. Schulz	
ConocoPhillips Canada Limited (ConocoPhillips) A. Avery	D. Nicks J. Gilholme M. Baker
Dow Chemical Canada Inc. (Dow) Not Represented	
EnCana Corporation (EnCana) D. Davies	
Government of the Northwest Territories (GNWT) K. Bergner M. Joko	
Industrial Gas Consumers Association of Alberta (IGCAA) G. Sproule	
Imperial Oil Resources and ExxonMobil Canada Energy (Imperial/EMC) M. W. McCachen R. Duffy K. McGlone	A. Safir M. Checkland R. Moore
Inter Pipeline Fund (IPF) A. Hollingworth H. Tanaka	P. Murphy
Keyera Energy Limited Partnership (Keyera) B. Lock S. Hathaway D. Rousch L. Dame	
Nexen Inc. (Nexen) S. Young D. White	

Name of Organization (Abbreviation) Counsel or Representative (APPLICANTS)	Witnesses
NOVA Chemicals Corporation (NOVA Chemicals) J. Smellie J. Cusano	V. Mirosh G. Flint G. Engbloom
NOVA Gas Transmission Ltd. (NGTL) H. Williamson F. Foran	S. Clark G. Milne G. Bietz D. Schultz
Office of the Utilities Consumer Advocate (UCA) R. Henderson J. Bryan	
Pembina Pipeline Corporation (Pembina Pipeline) P. Jeffrey R. Twyman	
Provident Energy Ltd. (PEL) C. Sheard	R. Lock
Quicksilver Resources Canada Inc. (QRCI) T. Kuehne	
Shell Canada Energy, Shell Energy North America (Canada) Inc., Shell Canada Products, and Shell Chemicals Canada Ltd. (Shell) M. Forster C. Wilton	R. Gall T. Lange S. MacDonald
Spectra Energy Empress L.P. L. E. Smith A. Sears	
State of Alaska (SOA) T. Ballentine	K. Banks G. Bidwell
Straddle Plant Group (SPG) - ATCO Midstream Ltd. - BP Canada Energy Company - Inter Pipeline Fund - Provident Energy Ltd. - Spectra Energy Empress L.P. D. Holgate A. Hollingworth H. Tanaka L. E. Smith C. Sheard	M. Drazen R. Mansell G. Goobie N. MacMurchy P. Murphy D. Moe R. Lock M. Dever

Name of Organization (Abbreviation) Counsel or Representative (APPLICANTS)	Witnesses
Talisman Energy Inc. (Talisman) G. Giesbrecht F. Basham	
Taylor NGL Limited Partnership (Taylor) B. Ho	D. Schmunk B. Van Schaayk K. Johnston
Tenaska Marketing Ventures and Tenaska Marketing Canada (Tenaska) F. Weisberg D. Ellerton	T. K. Cameron W. Donahue D. Gee M. Shoemaker
Western Export Group (WEG) F. Weisberg D. Ellerton	T. K. Cameron W. Donahue D. Gee M. Shoemaker
Ziff Energy Group (Ziff Energy) D. Edie	W. Gwozd D. Vetsch C. Gingrich S. Mauger

<p>Alberta Energy and Utilities Board</p> <p>Board Panel</p> <p>B. McManus, Presiding Member G. DeSorcy, Acting Member C. Dahl Rees, Member</p> <p>Board Staff</p> <p>B. McNulty (Board Counsel) H. Gnenz K. Eastlick B. Shand M. Kirsch C. Taylor W. MacKenzie C. Crowfoot R. MacLeod</p>	
--	--





APPENDIX 2 – ABBREVIATIONS AND DEFINITIONS

Abbreviation	Name in Full
A/BC	Alberta/British Columbia border point
ADOE	Alberta Department of Energy
AEEP	Alberta Ethane Ethylene Project
AEGS	Alberta Ethane Gathering System
AGEC	Alberta Gas Ethylene Corporation
AGTL	Alberta Gas Trunk Line Company
Alliance Pipeline	Alliance Pipeline Ltd.
AltaGas Utilities	AltaGas Utilities Inc.
AUC	Alberta Utilities Commission
Aux Sable	Aux Sable Canada Ltd.
Bcf/d	Billion standard cubic feet per day 1 Bcf = $28.2 \times 10^6 \text{ m}^3$
bpd	Barrels per day
BP Canada	BP Canada Energy Company
CAC	Customer Advisory Council
CAPP	Canadian Association of Petroleum Producers
CBM	coal bed methane
C ₂	ethane
C ₂₊ mix	Mixture of ethane, propane, and butanes that may or may not include pentanes plus
C ₃	propane
C ₃₊	Mixture of propane, and butanes that may or may not include pentanes plus
C ₄	butanes
C ₅₊	Pentanes plus
CO ₂	Carbon dioxide
CCM	Comprehensive Component Metering
CCPA	Canadian Chemical Producers Association
Common Stream	See Section 1.2.3.1 on page 12
ConocoPhillips	ConocoPhillips Canada Limited
Current Convention	See Section 1.2.3.1 on page 12


Abbreviation	Name in Full
Dome	Dome Petroleum Limited
Dow	Dow Chemical of Canada
EEEP	Edmonton Ethane Extraction Plant
EnCana	EnCana Corporation
ERCs	Extraction rights credits
ERCA	<i>Energy Resources Conservation Act</i> RSA 2000, c. E-10
ERCB	Energy Resources Conservation Board
EUB, Board	Alberta Energy and Utilities Board
FT-D	Firm Transportation - Delivery
FT-R	Firm Transportation - Receipt
FT-X	Firm Transportation - Extraction
H ₂ S	Hydrogen sulphide
GJ	Giga Joules (10 ⁹ Joules)
the Group or Amended SPG	ATCO Midstream Ltd., BP Canada Energy Company, Inter Pipeline Fund and Spectra Energy Empress L.P.
Gulf	Gulf Canada Resources Limited
Gulf Strachan Decision	Decision D 96-07 Gulf Canada Resources Limited - Strachan Gas Plant Approval Amendment NGTL Gas Side-streaming Application (September 26, 1996)
JEEP	Joffre Ethane Extraction Plant
IGCAA	Industrial Gas Consumers Association of Alberta
Imperial/EMC	Imperial Oil Resources and ExxonMobil Canada Energy
Inquiry Expert	Ziff Energy Group
IPF/PVE	Inter Pipeline Fund and Provident Energy Ltd.
IPL	Interprovincial Pipe Line
ISC	Instream components
IT	Information technology
Keyera	Keyera Energy Limited Partnership
MMcf/d	Million cubic feet per day
NCC	North Central Corridor
NEB	National Energy Board
NECTF	Natural Gas Liquid Extraction Convention Task Force

Abbreviation	Name in Full
NECTF Report	Natural Gas Liquid Extraction Convention Task Force reported entitled: <i>NGL Extraction: Current Convention and Alternatives prepared by the NGL Extraction Convention Task Force</i> , dated, September 2005
NEXT	NGL EXtraction Model
NIT	NOVA Inventory Transfer
NGL	natural gas liquids including ethane, propane, butanes, pentanes plus and mixtures of the components
NGTL	NOVA Gas Transmission Ltd.
Northern Gas	Mackenzie Delta and Alaska gas
NOVA Chemicals	NOVA Chemicals Corporation
OGCA	<i>Oil and Gas Conservation Act</i> RSA 2000, c. O-6
Pembina Pipeline	Pembina Pipeline Corporation
Pengrowth	Pengrowth Corporation
Shell	Shell Canada Energy, Shell Energy North America (Canada) Inc., Shell Canada Products, and Shell Chemicals Canada Ltd.
SOA	State of Alaska
Solex	Solex Gas Processing Corp.
Solex Decision	Decision 2004-006 Solex Gas Processing Corp. - Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines (January 27, 2004)
SPD	Straddle Plant Delivery
SPG	Straddle Plant Group
Talisman	Talisman Energy Inc.
Taylor	Taylor NGL Partnership Limited
TCPL	TransCanada Pipelines Ltd.
TTFP	Tolls, Tariff, Facilities and Procedures Committee
UCA	Office of the Utilities Consumer Advocate
WCSB	Western Canadian Sedimentary Basin
WEG/Tenaska	Western Export Group and Tenaska Marketing Ventures and Tenaska Marketing Canada
Ziff Energy	Ziff Energy Group

APPENDIX 3 – JUNE 4, 2007 NOTICE

Exhibit 001-01 June 4, 2007 NOTICE OF BOARD INITIATED PROCEEDING APPLICATION NO. 1513726 INQUIRY INTO NGL EXTRACTION MATTERS	 Appendix 3 - Ex 001-01.pdf
Exhibit 001-02 June 4, 2007 PRELIMINARY SCOPING DOCUMENT	 Appendix 3 - Ex 001-02.pdf
Exhibit 001-03 June 4, 2007 PRELIMINARY LIST OF ISSUES	 Appendix 3 - Ex 001-03.pdf
Exhibit 001-04 June 4, 2007 TENTATIVE PROCEDURAL SCHEDULE	 Appendix 3 - Ex 001-04.pdf

APPENDIX 4 – FINAL SCOPING DOCUMENT JULY 6, 2007

Exhibit 001-08 July 6, 2007 APPLICATION NO. 1513726 INQUIRY INTO NGL EXTRACTION MATTERS	 Appendix 4 - Ex 001-08.pdf
--	--

APPENDIX 5 – INQUIRY PROCEDURAL MATTERS – MOTIONS AND RULINGS

a) Shell Motion to Compel Better Information Responses

On October 29, 2007, the Board received a letter from Shell Canada Energy, Coral Energy Canada Inc., Shell Canada Products, and Shell Chemicals Canada Ltd. (collectively Shell) containing a motion (the Shell Motion) to compel better responses to specific Shell Information Requests to the SPG.³¹⁰ Consistent with the process set by the Board, SPG and NOVA Chemicals provided comments on November 5, 2007, and Shell replied on November 7, 2007.

On November 21, 2007 the Board issued a Ruling, Exhibit 001-17 which is attached as Appendix 9, denying the Shell Motion as it did not consider it appropriate to be directing participants to provide evidence that they did not voluntarily wish to provide, even if that evidence was within the scope of the proceeding and might have been helpful to participants or to the Board. The Board recognized that the Inquiry was different from the usual proceedings before the Board as the Inquiry was called by the Board and participation in the Inquiry was on a voluntary basis.

The Board did state that if the information requested in the Shell Motion was relevant, it could be pursued by Shell, other participants in the Inquiry or by the Board in the oral hearing. Further, the Board indicated that the Ruling would not constrain it from subsequently directing participants in the Inquiry to file information, if in the circumstances it considered such information relevant, material and required; either to allow the Board to reach its determinations in the overall public interest or in order to prevent unfairness to a participant.

The Board also reminded parties that assertions of financial hardship or other undesirable consequences from a change in extraction conventions must, as do assertions of benefits from a change in conventions, be supported by sufficient evidence if parties wished the Board to give weight to such assertions. Assertions without supporting evidence would, as in all proceedings before the Board, be accorded less weight by the Board in its deliberations.

b) Shell Request for Scope Clarification

The Board received a letter from Shell dated January 23, 2008 requesting direction as to the scope of the Inquiry.³¹¹ Shell stated that the need for clarification arose as a result of certain information responses by the Inquiry Expert commenting on questions related to the public interest impacts of diverting and consuming large amounts of natural gas and entrained NGL for the production of bitumen and synthetic crude.

Submissions were received on behalf of ADOE,³¹² Aux Sable,³¹³ ConnocoPhillips,³¹⁴ EnCana,³¹⁵ IGCAA,³¹⁶ IPF/PVE,³¹⁷ Nexen Inc.,³¹⁸ NGTL,³¹⁹ WEG/Tenaska,³²⁰ along with a reply from Shell according to the schedule set by the Board.

³¹⁰ Exhibit 039-06, Shell Motion to Compel Responses

³¹¹ Exhibit 039-13, Shell Letter Requesting Clarification Concerning the Scope of the Inquiry

³¹² Exhibit 002-09, ADOE Alberta Department of Energy's Letter re Shell's request for directions as to the scope of the Inquiry

³¹³ Exhibit 010-05, Aux Sable Response to Shell's January 23, 2008 Letter

³¹⁴ Exhibit 017-07, ConocoPhillips Letter re Response to Shell's Request

³¹⁵ Exhibit 022-05, EnCana Corporation letter re the Shell Request for Directions as to the Scope of the Proceeding

³¹⁶ Exhibit 029-05, IGCAA Letter re Response to EUB January 24, 2008 Request

³¹⁷ Exhibit 030-03, IPF/PVE letter re Shell's January 23, 2008 Request to Limit the Scope of the Inquiry

On February 1, 2008, the Board issued a letter³²¹ clarifying the scope of the Inquiry by indicating that public interest and public policy issues with respect to how natural gas is used within Alberta are not within the scope of the Inquiry, except to the extent that such uses have implications for NGL supply and demand. The forecasted intra-Alberta supply and demand for natural gas as well as the impacts of such supply and demand forecasts on:

- NGL recovery;
- The efficiency of NGL recovery; and
- NGL markets;

were clearly within the scope of the Inquiry. Accordingly, forecasted increases in natural gas as a fuel in bitumen and synthetic crude production, along with any other forecasted material increase in intra-Alberta natural gas demand, are relevant to the Inquiry to the degree they may materially impact the supply of NGL. The Board also noted specific sections of the July 6, 2007 scope letter stating that:

...the Board anticipates that the outcomes of the Inquiry may include any of the following:

- A description of current or proposed NGL extraction conventions on EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines (NGL Extraction Conventions), current issues and trends in gas supply, composition and NGL recovery;
- *Guidelines or other criteria to assist industry with respect to the economic, orderly and efficient development of Alberta's natural resources as it may relate to NGL extraction rights and facilities development including matters related to side-streaming and co-streaming;*
- *The identification of new conditions for new facility licenses, permits or approvals; and*
- *Potential recommendations to the Government of Alberta on policy matters beyond the mandate of the Board.*" [emphasis added]

In this context, the Board stated that it may, as a result of the Inquiry, consider the advisability of establishing, or recommending to government that it establish through legislation, public interest criteria or guidelines as one factor to be taken into account by a regulator when considering any industrial facility or pipeline application which could have a material detrimental impact on NGL recovery or extraction infrastructure. These criteria or guidelines would be considered in co-streaming and side-streaming facility applications as well as any facility or pipeline application which would increase the intra-Alberta consumption of natural gas, to the extent that approval of an application might result in a material detrimental impact on NGL recovery or extraction infrastructure.

At the commencement of the oral hearing on February 5, 2008 counsel for Shell raised concerns in response to the Board's ruling and requested further clarification. On February 6, 2008, Shell submitted a letter requesting further advice and direction from the Board concerning the scope of the inquiry.³²² That letter was supported by Imperial/EMC in a letter filed February 7, 2008.³²³

³¹⁸ Exhibit 032-02, Nexen Inc. Letter re Shell's Request for Direction as to the Scope of the Inquiry

³¹⁹ Exhibit 034-12, NGTL Letter re Response to Shell Request

³²⁰ Exhibit 052-10, WEG/Tenaska Letter - Comments re the Scope of the Inquiry into NGL Extraction Matters

³²¹ Exhibit 001-27, EUB letter re Board Ruling on Shell Request for Direction as to the Scope of the Inquiry (attached as Appendix 10)

³²² Exhibit 053-010, Letter from the Shell Group of Companies, dated February 6, 2008, Requesting Further Advice and Direction from the Board Concerning the Scope of the Inquiry

On February 7, 2008 the Chairman noted that the issue was clearly a matter of concern, and took the opportunity to clarify the Board's February 1, 2008 letter.³²⁴

...The panel can confirm that it does not intend, as a result of this present inquiry, and based on the evidence of this record, to establish or recommend to government that it establish public-interest criteria or guidelines that would be applicable to an application for an oil sands mining facility, an upgrader, facilities related to an in situ bitumen recovery scheme, or an expansion to such a facility, or to applications for other types of industrial facilities such as power generation plants.

To be clear, the panel considers that such criteria or guidelines may be considered in relation to pipelines or extraction facilities.

Parties will appreciate, however, that this panel makes no comment on any public-interest criteria or guidelines that may be considered by any other panel of the ERCB or the AUC in any specific facility application or in relation to evidence on the record of any such proceeding.

We trust this provides the clarification requested.

c) WEG/Tenaska Request for Clarification

On February 4, 2008, the Board received a letter from counsel for WEG/Tenaska,³²⁵ requesting clarification concerning the extent to which the Gas Equalization Model should have been considered by Inquiry Expert as an alternative to the current Extraction Convention, and a direction to have the Inquiry Expert Panel specifically address the Gas Equalization Model in its testimony in Part 1 of the Inquiry. The Board responded in opening comments at the commencement of Part 1 of the Inquiry on February 5, 2008 as follows:³²⁶

The Board would be reluctant to direct any independent expert as to how it should prepare its evidence or address any matter in testimony, and declines to make such a direction. The Board anticipates that WEG and Tenaska will be able to examine Ziff on the gas equalization model in a sufficient manner in this proceeding, and they further address the model in argument and reply.

As usual, the Board expects Ziff, as it does with all witnesses, to give full and complete answers to all questions to the best of their ability.

d) SPG Preliminary Matter Regarding Unsponsored Evidence

On January 11, 2008, the Board received a letter³²⁷ on behalf of the SPG requesting the Board to issue a ruling on "the weight to be accorded to evidence and statements submitted by parties who are not putting up witness panels". In particular, SPG noted the filings of the ADOE and the SOA. The SPG requested a ruling "that unsponsored evidence will be given little or no weight in the Board's decision-making process and its ultimate determination". As requested by the Board, the SPG provided an additional submission on January 22, 2008,³²⁸ and submissions responding

³²³ Exhibit 053-013, Letter Respecting Clarification of Scope

³²⁴ Transcript Volume 5, page 505

³²⁵ Exhibit 053-002, Letter from Weisberg Law Corporation on behalf of the Western Export Group and Tenaska Marketing Ventures and Tenaska Marketing Canada

³²⁶ Transcript Volume 1, page 12

³²⁷ Exhibit 042-14, SPG Letter re Preliminary Matters

³²⁸ Exhibit 042-16, SPG's Submission Concerning Evidentiary Weight

to the Ruling Request were received on January 29, 2008, from the ADOE,³²⁹ SOA,³³⁰ NGTL,³³¹ and Pembina Pipeline.³³² SPG replied to these submissions on February 4, 2008.³³³

The Board responded in writing on February 15, 2008 (Exhibit 053-21 which is attached as Appendix 8) as follows.

The Board considers that the principles to be applied to a consideration of Un-sponsored Evidence before this Inquiry should be similar to those generally applied to a proceeding brought in the normal course by an applicant.

Consideration of Un-sponsored Evidence turns on relevance and the appropriate weight merited in the particular circumstances. In this regard, the Board notes that no Participant in the Inquiry has suggested that the Un-sponsored Evidence is not relevant, and the Board agrees that the ADOE and SOA Un-sponsored Evidence is relevant to the matters before the Inquiry. Relevant but Un-sponsored Evidence, will customarily be accepted by the Board, but the Board acknowledges that caution should be exercised in evaluating evidence that has not been fully tested. Therefore, the Board has ordinarily discounted the weight of such evidence, or attributed to it no weight at all, however, the appropriate time for the Board to make the determination as to weight of relevant Un-sponsored Evidence is after it has heard all the evidence and has received the benefit of argument from all parties on all relevant matters, including the appropriate weight to accord the Un-sponsored Evidence.

In evaluating the weight to be accorded evidence, which is not sponsored by a witness panel and which the Board, in Section 2 and Appendix 6 of this Decision, refers to as Supported but Un-sponsored Evidence, the Board determined that it must take into account a number of factors, many of which would not be determined until after the close of the proceeding.

e) Late Requests to Participate

The most numerous procedural matters consisted of late requests by various parties for permission to participate in the Inquiry. Table 1 summarizes the dates and exhibit numbers of these requests and the Board's responses.

Table 4: Late Participation Requests

Company	Date of Letter (2008)	Exhibit #	Response Exhibit #/Date
Hunt Oil Company of Canada, Inc.	May 5	055-01	001-034 / May 22/08
Apache Canada Ltd.	May 8	054-01	001-034 / May 22/08
Compton Petroleum Corporation	April 29	058-01	001-040 / May 26/08
Bonavista Petroleum Ltd.	May 13	057-01	001-040 / May 26/08
Peyto Exploration & Development Corp.	May 18	056-01	001-040 May 26/08
Progress Energy Ltd.	May 23	059-01	001-040 / May 26/08
Duvernay Oil Corp.	May 15	053-025	053-027 / May 27/08
Paramount Resources	May 23	053-026	053-027 / May 27/08
Canadian Natural Resources Limited	May 26	053-047	053-048 / June 11/08
Talisman Energy Inc.	May 23	053-028	053-029 / May 28/08
Pengrowth Corporation	May 8	053-090	053-091 / July 15/08

³²⁹ Exhibit 002-10, ADOE Letter in Response to the SPG Preliminary Matter

³³⁰ Exhibit 041-04, SOA Letter in Response to the SPG Preliminary Matter

³³¹ Exhibit 034-14, NGTL Letter re The Request for a Preliminary Ruling by the Straddle Plant Group

³³² Exhibit 036-08, Pembina Letter in Response to the SPG Preliminary Matter

³³³ Exhibit 053-007, Letter from Gowlings re the Weight to be Given to Un-sponsored Evidence

With the exception of Talisman Energy Inc. and Pengrowth Corporation (Pengrowth) the Board allowed each party to be registered as an intervener and permitted it to file argument and reply argument subject to certain caveats. Ordinarily, the Board would not have allowed the filing of interventions at such a late stage of a proceeding. However, in allowing most of the above parties to register, the Board took into account that the Inquiry was Board initiated process into matters of public interest, the outcome of which could potentially have long term implications for many parties. The Board had actively invited participation from a broad spectrum of interested parties and considered broad participation critical to a complete understanding of the matters at issue. Consequently, the Board was reluctant to exclude participation by any party expressing an interest in the outcome of the Inquiry provided participation could be done in a fair and efficient manner.

The Board noted that the requests stated a position that was very similar to each other and strongly encouraged these parties to coordinate their participation and arguments. The statements made in the letters requesting permission to register as parties and to file argument were more in the nature of direct evidence and fairness dictated that these would be considered as unsponsored evidence consistent with the Board's ruling dated February 15, 2008,³³⁴ given the lack of opportunity for parties, the Inquiry Expert and the Board to test these statements.

Talisman was already a registered participant in the Inquiry and had been afforded an opportunity to file submissions within the timelines prescribed for the process. Therefore, the Board was not prepared to allow additional submissions in the Inquiry that would not have been subjected to the information request and reply process previously completed. The Board noted that the comments in Talisman's letter were more in the nature of argument and requested that Talisman re-file its argument and reply consistent with timelines that would be set out for that process.

While the Board had attempted to be flexible and permitted late registration of parties to the Inquiry, the request from Pengrowth was received at a point where the oral portion of the Inquiry was nearly completed and substantially later than the late registration requests of other parties. The Board therefore considered it to be inappropriate and potentially unfair to other Inquiry participants to allow Pengrowth to register as an additional participant and Pengrowth's request was denied.

f) Motions with Respect to the Consideration of New Matters by the Inquiry Expert

Due to the time delay between Part 1 and Part 2 of the oral portions of the Inquiry the Board, on request of counsel for the SPG, established by letter dated February 11, 2008³³⁵ a process whereby parties could request the Board to direct the Inquiry Expert to consider the "potential impact of a material event, material change in circumstance or discovery of new material information that may occur or become available subsequent to the close of Part 1 of the Inquiry" that may require the Inquiry Expert to alter or amend its assessment or conclusions. No party filed such a request with the Board, however on May 9, 2008, NGTL filed a motion³³⁶ that requested the Board to direct The Inquiry Expert to advise the Board whether any evidence arising through the cross-examination of other parties during Part 2 of the oral portion of the Inquiry would cause the Inquiry Expert to alter or amend its evidence. The Motion further

³³⁴ Exhibit 053-21, Board Ruling on SPG Preliminary Matter re Unsponsored Evidence (attached as Appendix 8)

³³⁵ Exhibit 053-015, Letter in Response to the Request for Ziff to Return on the Second Phase of the Inquiry

³³⁶ Exhibit 034-16, NGTL's Submission – Response to Board's Letter and NGTL Motion

requested that if an amendment was filed, the Inquiry Expert would reappear for cross-examination on the new submission.

In a letter, dated May 15, 2008,³³⁷ the Board denied the NGTL Motion as the process established by the Board was specifically created in response to the necessity to divide the oral hearing into two parts and was intended to ensure that all oral testimony was provided by parties with a common understanding of material facts and circumstances relevant to the Inquiry. This additional process was not intended in any way to amend the original process steps established for the submission of Inquiry Expert evidence and the reply to and testing of that evidence by parties.

g) Ruling Regarding Impact of Application by TCPL to the NEB

On June 17, 2008, TCPL filed an application (TCPL Application) with the NEB to bring the Alberta pipeline system of its wholly-owned subsidiary, NGTL, under the jurisdiction of the federal regulator.

The TCPL Application and an accompanying press release were added to the record of the Inquiry as Exhibits 053-58 and 053-57, respectively, on June 17, 2008. Following requests by certain parties, the Board set aside Friday, June 20, 2008 for submissions on the implications of the TCPL Application to the Inquiry.

In its Ruling dated June 21, 2008³³⁸ the Board ruled on the following issues:

1. Does the Board have the jurisdiction to continue with the Inquiry insofar as it may relate to the NGTL System?
2. In the event the Board has the jurisdiction to proceed with the Inquiry, should the Board proceed in light of the Application?
3. If the Board proceeds, are there any process adjustments required? In particular:
 - a. should NGTL be asked to present a panel knowledgeable as to both the Application and NGTL's evidence in this Inquiry? and
 - b. should parties who wish to supplement their pre-filed evidence be allowed to do so in order to address any substantive changes that may be required as a result of the filing of the Application?

The ruling concluded that the Board continued to have jurisdiction with respect to the NGTL System until such time as a competent authority determined otherwise. The Board saw no reason to terminate the Inquiry or to adjourn it pending an NEB decision on the Application. Further, the Board was not convinced that amendments to the scope or to the objectives of the Inquiry were necessary. NGTL was also directed to seat a panel for the purpose of addressing changes, amendments or corrections, if any, to NGTL's evidence and testimony necessitated by the TCPL Application.

³³⁷ Exhibit 001-33, Board Letter re NGTL Motion and New Matters Submission by Ziff Energy (attached as Appendix 11)

³³⁸ Exhibit 053-63, Board Procedural Ruling re Impact of TCPL Application (attached as Appendix 12)

h) Ruling Regarding Motion and Notice of Question of Constitutional Law³³⁹

Following the Board's June 21, 2008 ruling, on June 27, 2008, BP Canada, IPF, PVE, ATCO Midstream Ltd. and Spectra Energy Empress L.P. (the Motion Applicants) filed a Motion and Notice of Question of Constitutional Law (Constitutional Motion) with the Board requesting:

...a determination that issues respecting NOVA Gas Transmission Limited's ("NGTL") tariffs, tolls, operations and practices, including any proposed change in contracting convention for natural gas liquids ("NGLs") extraction rights in the common stream on the NGTL System, are *ultra vires* the Board, as the NGTL System is an interprovincial undertaking. Accordingly, the Board is without jurisdiction to consider these issues in Application No. 1513726 (the "NGL Inquiry").³⁴⁰

Among the relief requested, the Motion Applicants requested an order staying or adjourning the Inquiry until determination by the Board, the NEB or a Court of competent jurisdiction of the question of whether the NGTL System is subject to exclusive federal jurisdiction as part of an interprovincial undertaking.

On July 28, 2008 a submission in favour of the Constitutional Motion was received from WEG/Tenaska³⁴¹ and submissions opposed to the Motion were received from EnCana:³⁴² NGTL,³⁴³ CAPP,³⁴⁴ Shell,³⁴⁵ ADOE,³⁴⁶ Imperial/EMC,³⁴⁷ ConocoPhillips,³⁴⁸ NOVA Chemicals³⁴⁹ and Taylor NGL Partnership Limited (Taylor).³⁵⁰ A Reply Submission from the Motion Applicants was received on August 7, 2008.³⁵¹

The Motion Applicants, supported by WEG/Tenaska, argued that the Board lacked the jurisdiction to proceed with the Inquiry insofar as it may relate to the tariffs, tolls, operations and practices, including any proposed change in convention for extraction rights to the NGL entrained within the Common Stream on the NGTL System, as the NGTL System is an interprovincial undertaking.

³³⁹ Exhibit 053-076, Bennett Jones LLP Letter on Behalf of BP Energy Company, ATCO Midstream Ltd. and Spectra Energy Empress L.P. dated June 27, 2008 Filing a Motion and Notice of Question of Constitutional Law, Exhibit 053-077, Notice of Motion regarding Constitutional Question of Law Filed by BP Energy Company, ATCO Midstream Ltd. and Spectra Energy Empress L.P. and Exhibit 053-078, Notice of Question of Constitutional Law to the Minister of Justice and Attorney General of Alberta, the Attorney General of Canada and the Alberta Energy and Utilities Board from BP Energy Company, ATCO Midstream Ltd. and Spectra Energy Empress L.P.

³⁴⁰ Exhibit 053-77, Notice of Motion regarding Constitutional Question of Law Filed by BP Energy Company, ATCO Midstream Ltd. and Spectra Energy Empress L.P., page 2 paragraph 1

³⁴¹ Exhibit 062-010, WEG Constitutional Motion Submission

³⁴² Exhibit 062-04, EnCana Constitutional Motion Submission

³⁴³ Exhibit 062-06, NGTL Constitutional Motion Submission and 062-06-01, NGTL Constitutional Motion Submission Authorities

³⁴⁴ Exhibit 062-02, CAPP Constitutional Motion Submission

³⁴⁵ Exhibit 062-08, Shell Constitutional Motion Submission

³⁴⁶ Exhibit 062-01, ADOE Constitutional Motion Submission

³⁴⁷ Exhibit 062-05, Imperial/EMC Constitutional Motion Submission Cover Letter, Exhibit 062-05-01, Imperial/EMC Constitutional Motion Submission and Exhibit 062-05-02, Imperial/EMC Constitutional Motion Submission Authorities

³⁴⁸ Exhibit 062-03, ConocoPhillips Constitutional Motion Submission

³⁴⁹ Exhibit 062-07, NOVA Chemicals Constitutional Motion Submission

³⁵⁰ Exhibit 062-09, Taylor Constitutional Motion Submission Cover Letter, and Exhibit 062-09-01, Taylor Constitutional Motion Submission

³⁵¹ Exhibit 062-011, "The Applicants" Reply Submission Cover Letter, Exhibit 062-011-01, "The Applicants" Reply Submission and Exhibit 062-011-02, "The Applicants" Reply Submission - Book of Authorities and References in support of the Reply Submissions of the Applicants

The Board dismissed the Constitutional Motion in a ruling dated August 15, 2008³⁵² stating that the Motion Applicants failed to establish to the satisfaction of the Board a sufficient basis for granting any of the requested forms of relief.

A review of the Notice and the Final Scoping Document confirmed that the Board intended to pursue public interest matters related to NGL extraction that have been outstanding for many years dating back prior to the 1996 Gulf Strachan Decision. The Inquiry was commenced under broad inquiry powers under several statutes and was stated to be for the purpose of examining issues related to NGL extraction from the perspective of providing for the economic, orderly and efficient development of Alberta's natural resources in the public interest. The Board's jurisdiction to inquire into matters related to providing for the economic, orderly and efficient development of Alberta's oil and gas resources in the public interest³⁵³ had not been challenged by the Motion. Similarly, no parties challenged the scope of the Inquiry on jurisdictional grounds when it was first initiated.

The Board disagreed with the Motion Applicants' submission that the Inquiry would not be able to consider matters that could relate to the NGTL System. The Board reiterated its stated intention that the Inquiry was initiated to consider NGL extraction issues from the perspective of providing for the economic, orderly and efficient development of Alberta's natural resources in the public interest.

The Board considered that its clear jurisdiction with respect to providing for the economic, orderly and efficient development of Alberta's natural resources and the interests of those that depend on those resources in the public interest was sufficient basis for the Board to continue with the Inquiry, a process that would result in the Board considering possible recommendations relating to the matters dealt with in the Inquiry.

The outcome of the Inquiry was also addressed in the Board's ruling as discussed in Section 1.4.1. The Board referred to the creation of the ERCB and the AUC as of January 1, 2008, as evidence of the intention of the legislature to phase out any ongoing role for the Alberta Energy and Utilities Board. Accordingly, further proceedings or processes, including compliance filings that could result from directions of the Board would fall to the successor tribunals to consider. Although the Board remained able to issue decisions and directions as originally contemplated, from a practical perspective, the Board considered such measures, in the circumstances, to be inadvisable. Making recommendations to the applicable authority appeared to be the most appropriate method of proceeding. Consequently, the Board determined that it would make recommendations only with respect to the matters dealt with in the Inquiry, rather than issue specific decisions or directions in relation to any such matters.

³⁵² Exhibit 001-42, Board Letter - Ruling on Constitutional Question Motion (attached as Appendix 13)

³⁵³ *Oil and Gas Conservation Act*, R.S.A. 2000, c. 0-6, Sections 4, 7 and 94; *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, Sections 2, 3, 20 and 21

APPENDIX 6 – PRELIMINARY ISSUE – WEIGHT TO BE GIVEN UNSPONSORED EVIDENCE

During the course of the Inquiry the issue of what evidence was included on the record and what weight should be accorded to evidence that was not sponsored by a witness panel arose in two very different contexts. First, the Board must consider evidence that is supported by a participant but not spoken to by a witness panel (Supported but Un-sponsored Evidence). Second, the Board must consider if different treatment should be accorded to evidence which is either:

- filed by a party which initially supports such evidence, but then withdraws its support and does not present a witness panel to sponsor such evidence; or
- filed by a party which initially supports such evidence, sits a witness panel to sponsor the evidence which is then subjected to cross-examination, but support for the underlying evidence and associated testimony is then withdrawn by its proponent,

as the consequence of a subsequent occurrence of certain events or a change in circumstances (Unsupported and Un-sponsored Evidence).

Given that not all parties distinguished between Supported but Un-sponsored Evidence and Unsupported and Un-sponsored Evidence, and various terms have been used by different parties when referring to these two types of evidence including: un-sponsored evidence, redacted evidence, withdrawn evidence, amended evidence and re-filed evidence, the Board, where necessary, has collectively referred to Supported but Un-sponsored Evidence and Unsupported and Un-sponsored Evidence as “Un-sponsored Evidence”.

The Board considers that the weight to be given to the two categories of Un-sponsored Evidence to be important in understanding how the Board evaluated the extensive evidence of this proceeding. Consequently a discussion of how the Board dealt with Un-sponsored Evidence is addressed as a preliminary matter in this Decision.

Supported but Un-sponsored Evidence is discussed in Appendix 5 in connection with the weight to be given to the evidence of the SOA and of the ADOE. At the time of the SPG motion referred to in that section, neither the SOA nor the ADOE intended to sit a witness panel in the oral hearing portion of the proceeding to speak to their respective evidence. The Board provided its ruling on February 15, 2008 deferring consideration of the issue until after the close of the proceeding.³⁵⁴

The SOA subsequently did present a panel, accordingly the issue raised by the SPG remains only with respect to the evidence of the ADOE.

The Board also notes, however, that other participants in the Inquiry provided information request responses or other evidence that was not spoken to by a witness panel, but remained supported by the participant. Letters from parties listed in Table 4 requesting late registration to participate in the Inquiry also included statements regarding the position of the parties in favour of a receipt point convention change and the NEXT Model. None of these parties proffered a witness to address these submissions. The parties listed in Table 5 more fully participated in the Inquiry by providing evidence submissions in August 2007, and information requests and responses. Likewise, however, none of these participants provided a witness to speak to their respective evidence. Some of these parties also filed argument and reply argument.

³⁵⁴ Exhibit 053-21, Board Ruling on SPG Preliminary Matter re Un-sponsored Evidence (attached as Appendix 8)

Table 5: Parties Submitting Supported but Un-sponsored Evidence

Inquiry Participant	Evidence Provided
Alberta Department of Energy	Submission, information requests, information responses
Alberta Envirofuels Inc.	Submission, information responses
Alliance Pipeline Ltd.	Submission, information requests, information responses
AltaGas Ltd.	Submission
AltaGas Utilities Inc.	Information responses
ATCO Pipelines	Submission, information requests, information responses
Aux Sable Canada Ltd.	Submission, information responses
Canadian Chemical Producers Association	Submission, information responses
Canadian Association of Petroleum Producers	Submission, information responses
EnCana Corporation	Submission, information responses
Government of the Northwest Territories	Submission, information requests, information responses
Granite Gas Products Inc.	Submission, information responses
Industrial Gas Consumers Association of Alberta	Submission, information responses
Keyera Energy Partnership	Submission, information responses, rebuttal evidence
Office of the Utilities Consumer Advocate	Submission, information requests, information responses
Pembina Pipeline Corporation	Submission, information requests, information responses
Quicksilver Resources Canada Inc.	Submission, information responses

The other issue with respect to filed evidence relates to Unsupported and Un-sponsored Evidence, where a proponent has withdrawn support for filed evidence as a result of subsequent events or a change in circumstances. As a consequence of this withdrawal of support, the evidence was purported to be re-filed, amended, withdrawn or otherwise modified. The original evidence was therefore not supported by a witness panel prepared to speak to it or, alternately, testimony of a party's witness panel was no longer supported by a subsequent panel of that party.

As indicated in Appendix 5 of this Decision, the Board issued a ruling on June 21, 2008 confirming its intention to proceed with the original scope of the Inquiry despite an application on June 17, 2008 by TCPL to the NEB requesting that the NGTL facilities in Alberta be brought under the jurisdiction of the Federal regulator. At the time this ruling was issued, much, but not all, of the evidence anticipated to be sponsored by witness panels had been subjected to cross-examination. In particular, some of those parties opposed to a change in the NGL extraction conventions had not completed, or in some cases had not yet commenced their oral testimony.

The Board's decision to continue the Inquiry without change to the scope resulted in some parties amending evidence that had already been attested to and cross-examined, and other parties deciding not to seat a witness panel to support their evidence. Still other parties sat a panel but declined to answer questions on certain matters and some parties filed amendments to, or deleted certain portions of their evidence. In addition the SPG no longer continued to act as a consolidated group with Provident withdrawing and sitting as a separate panel with IPF. This resulted in an unusual situation where the Board had before it, evidence that was not spoken to

by a witness panel and some evidence that was subsequently altered with only the altered evidence being addressed by a witness panel.

Provident and IPF, independent of the Amended SPG, filed a letter dated July 8, 2008 with revised evidence and responses to information requests.³⁵⁵ The revised evidence, among other matters, adopted the Wright Mansell Research Ltd. report *Trends in Natural Gas Supply and Demand and Implications for NGL Extraction and Infrastructure*.³⁵⁶ The revised responses to information requests³⁵⁷ withdrew previous Information Request responses related to gas volumes exported, arrangements with straddle plants, the North Central Corridor pipeline project, impacts of a change to a receipt point convention, adoption of the SPG submission and implications of the NEXT Model for Alaska gas.

The Amended SPG filed a letter dated July 8, 2008 that identified which aspects of previously filed SPG evidence it continued to support and that its joint policy panel would speak to.³⁵⁸ Relative to its August 28, 2007 evidence³⁵⁹ submission, the letter indicated that the Amended SPG in effect would not be supporting the reports *Issues Regarding the Distribution of Benefits from NGL Extraction in Alberta* by Wright Mansell Research Ltd.³⁶⁰ *Current Alberta NGL Extraction Convention* by Purvin & Gertz³⁶¹ and Evidence of Drazen Consulting Group, Inc.³⁶² including any related testimony of the SPG Expert Panel that had previously testified, as well as sections of its evidence related to the Current Convention and possible changes to the convention.

Similarly, with respect to the SPG November 6, 2007 Rebuttal Evidence,³⁶³ the Amended SPG indicated it would not be supporting evidence related to modifications to the Current Convention, issues related to ownership and title of gas and NGL, value of extraction premiums, evaluation of benefits and costs of convention change, critique of the NEXT proposal and implications of receipt point convention with respect to side-streaming or co-streaming.

In the same manner, the letter indicated that the Amended SPG no longer supported sections of the SPG January 28, 2008 Rebuttal Evidence to the Inquiry Expert's report³⁶⁴ dealing with implications of a convention change on attracting Alaska gas, impacts of a convention change, Perceived Inequities, allocation of extraction rights, extraction rights markets, feasibility of convention alternatives, U.S. practices and overall evaluation of convention alternatives.

The Amended SPG's letter listed the SPG responses to information responses that it continued to support. By omission the list of supported evidence indicated that information responses³⁶⁵ no

³⁵⁵ Exhibit 053-082, Provident Energy Ltd. and Inter Pipeline Fund Letter dated July 8, 2008 Submitting 1) Revised Evidence of Provident Energy Ltd. and Inter Pipeline Fund dated July 8, 2008 and 2) Revised Responses to Information Requests

³⁵⁶ Exhibit 053-082-01, Revised Evidence of Provident Energy Ltd. and Inter Pipeline Fund dated July 8, 2008

³⁵⁷ Exhibit 053-082-02, Revised Responses to Information Requests of Provident Energy Ltd. and Inter Pipeline Fund dated July 8, 2008

³⁵⁸ Exhibit 053-085, Bennett Jones LLP Letter on Behalf of BP Energy Company, IPF, ATCO Midstream Ltd. and Spectra Energy Empress L.P. dated July 8, 2008 Addressing Supported Evidence

³⁵⁹ Exhibit 042-02-01, Straddle Plant Group - Evidence

³⁶⁰ Exhibit 042-02-03, Straddle Plant Group - Issues Regarding the Distribution of Benefits from NGL Extraction in Alberta by Wright Mansell Research Ltd.

³⁶¹ Exhibit 042-02-04, Current Alberta NGL Extraction Convention by Purvin & Gertz

³⁶² Exhibit 042-02-09, Straddle Plant Group - Evidence of Drazen Consulting Group Inc.

³⁶³ Exhibit 042-07-01, SPG Rebuttal Evidence

³⁶⁴ Exhibit 042-17-01, SPG Rebuttal Evidence to Ziff

³⁶⁵ Exhibit 042-04, Straddle Plant Group Cover Letter for Information Responses and attached Information Request Responses to Inquiry Participants (Exhibits 042-04-01 through 042-04-10)

longer supported, addressed matters related to Current Conventions, alternative conventions, straddle plant economics including extraction premiums, transfers of extraction rights, straddle plant operating practices and attracting ex-Alberta gas to the NGTL System.

WEG/Tenaska filed a supplemental submission dated July 8, 2008³⁶⁶ with respect to implications of the TCPL Application to the NEB on matters before the Inquiry but did not withdraw any of their previously submitted evidence.

a) Views of Participants

There was generally a consistent view among participants that Unsupported and Un-sponsored Evidence should be accorded less or no weight relative to supported and sponsored evidence that was subject to clarification and explanation through cross-examination. Some parties expressed views, however that Unsupported and Un-sponsored Evidence remained part of the Inquiry record for the Board to consider as appropriate. The Amended SPG noted that as a consequence of its Unsupported and Un-sponsored Evidence, that the record of the Inquiry was incomplete with respect to NGL extraction convention matters.³⁶⁷

The ADOE stated that little weight should be place on redacted evidence, except that tested in information requests and cross-examination. It added, however that tested evidence should be treated as any other.³⁶⁸

The CCPA stated that given the critical Inquiry aspects of gathering information and understanding issues, evidence can be taken into account even if it is not supported by a panel.³⁶⁹

ConocoPhillips submitted that evidence supported by witness panels such as the SPG Expert Panel should form part of the Inquiry record and that related evidence that was later withdrawn and not supported should also form part of the record even if it is given little weight.³⁷⁰ It noted that the Amended SPG did not speak to issues related to the extraction convention and stated that it would be unfair to consider arguments of the Amended SPG in favour of the status quo.³⁷¹

Imperial/EMC noted that it is within the purview of the Board to accord little or no weight to evidence that parties refused to adopt or support in cross-examination. It stated that little or no weight should be accorded to SPG written materials that were not supported. While the SPG Expert Panel did adopt their reports and provide testimony, Imperial/EMC said that it would be odd for the Board to rely on the evidence that was no longer relied upon by the interveners themselves and stated that Amended SPG ought not be able to rely on unsponsored evidence to advance its position in the Inquiry.³⁷²

NGTL stated that unsponsored evidence where the authors declined to testify should be disregarded by the Board and given no weight. It noted that the original SPG sponsors of unsupported evidence made a voluntary decision to not speak to it and that other parties chose to produce witnesses to speak to related evidence while protecting their rights by other means. With respect to filed evidence that the SPG Expert Panel testified to, NGTL said that this evidence

³⁶⁶ Exhibit 053-083, Supplemental Submission of the Western Export Group and Tenaska dated July 8, 2008

³⁶⁷ ATCO Midstream, BP Canada Energy Company, Inter Pipeline Fund and Spectra Energy Empress L.P. (the Amended SPG) Reply Argument, pages 5 and 6

³⁶⁸ Alberta Department of Energy Final Argument Submission, pages 2 and 3

³⁶⁹ CCPA Final Arguments, page 1

³⁷⁰ ConocoPhillips Argument, pages 10 and 11

³⁷¹ ConocoPhillips Reply Argument, pages 2 and 3

³⁷² Imperial/EMC Argument, pages 4 and 5

forms part of the record of the Inquiry and should not be withdrawn or redacted. While NGTL addressed this evidence in its Argument, it urged the Board to be cautious in determining the weight of SPG Expert Panel evidence given the interrelationship to questions referred to the Amended SPG policy panel that were not responded to.³⁷³ It said that the Board should not set aside rules of evidence and the need for testing of positions and assertions of fact through cross-examination. In that regard, evidence and related positions that have been tested in cross-examination need to be given substantially greater weight than claims or assertions in filings or argument that were not tested in cross-examination.³⁷⁴ NGTL further stated the argument of the Amended SPG, that as a result of its decision to redact portions of its evidence, the Board had an incomplete record to assess proposals and positions of parties to the Inquiry, is without merit.³⁷⁵

The UCA submitted that there is no limitation for the Board to consider unsponsored evidence provided it is relevant to the proceeding. It submitted that the information source, supporting information, quality and bias of parties supplying information must be considered. It stated that evidence withdrawn should not be treated as part of the record and any reference to it in argument or reply should not be considered by the Board.³⁷⁶

Shell stated that the Board is a court of record and that evidence removed from the record that is unsponsored and not supported cannot be accorded any weight. It said that this is an issue of procedural fairness to protect parties with different interests in situations where evidence is placed on the record by parties that either do not appear to support the evidence or refuse to answer questions on the evidence. Shell said that parties opposite in interest, however, should have the opportunity to waive their concerns with respect to Unsponsored evidence should they choose to rely on it. It noted that the Board would have to be satisfied that the evidence had received sufficient testing to warrant confidence in it.³⁷⁷ Shell did not agree with the position taken by Pembina Pipeline in its Argument that its evidence should not be penalized as a consequence of it not producing a panel at the Inquiry. Shell said that little or no weight should be accorded to Pembina Pipeline's written evidence as it denied other parties the opportunity to cross-examine its panel.³⁷⁸ It further stated that SPG evidence that is no longer supported and referred to by Pembina Pipeline in its Argument should be accorded little weight including references to SPG evidence on costs of implementing the NEXT Model.³⁷⁹ Given that the Amended SPG withdrew its support for SPG evidence on modifying the NGL extraction convention, Shell stated that little weight should be accorded to the Amended SPG's Argument on whether changing the convention would attract Alaska gas.³⁸⁰

Pembina Pipeline said that the Board should not penalize its evidence by according it little weight even though Pembina Pipeline did not sit a panel at the Inquiry. It noted that the proceeding was an inquiry and consideration of evidence should not be as rigorous as a Court or formal Board hearing. It said that the Board had considerable latitude in admitting and deciding on the weight of evidence in the Inquiry. It also stated that Pembina Pipeline's evidence was supported by testimony of other parties and that parties have had ample time to respond to its

³⁷³ NOVA Gas Transmission Ltd. Argument, pages 1-9 through 1-12

³⁷⁴ NOVA Gas Transmission Ltd. Reply Argument, pages 2-2 and 2-3

³⁷⁵ Ibid, pages 3-1 and 3-2

³⁷⁶ Office of Utilities Consumer Advocate Argument pages 2 through 5

³⁷⁷ Shell Canada Energy et al Final Argument, pages 7 through 9

³⁷⁸ Shell Canada Energy et al Reply Argument, pages 8 and 9

³⁷⁹ Ibid, page 14

³⁸⁰ Ibid, page 17

evidence. Pembina Pipeline stated that the Board should give significant and appropriate weight to its written evidence.³⁸¹

Talisman stated that a decision by the Board to discount unsupported evidence based on circumstances and the nature of the evidence would be consistent with legal principles and regulatory convention and that it was confident that the Board would make an appropriate determination.³⁸²

The Amended SPG said that it had re-filed evidence of a substantially narrower scope than the material initially filed by the SPG in the light of the TCPL/NGTL jurisdictional developments. It stated:³⁸³

4. The issue therefore, is basic. It would be inappropriate to attempt to interpret those positions taken by the former SPG without the benefit of the additional explanation and clarification provided by cross-examination.

The Amended SPG stated that the only evidence that can be said to be before the Board was outlined in its July 8, 2008 letter (Exhibit 053-085) and subsequently supported by its policy panel.³⁸⁴ That said, the Amended SPG stated in response to questions of Board Counsel that it would have continued to support all of the filed SPG evidence had it not been for the application by TCPL to move NGTL to Federal jurisdiction:³⁸⁵

Q. Sure. In other words, your panel would have continued to support all of your filed evidence in this proceeding had the application by TransCanada to move NGTL under federal jurisdiction not been filed with the NEB; is that correct?

A. MR. MOE: Yes, that is correct. We always understood that there was a possibility that that application was made but that when it got made, then particularly the notion of public interest changes dramatically and our ability to consider issues within the confines of Alberta become different than if – become different in the presence of the TransCanada application and the understanding that it's a federal enterprise.

Q. So you would have proceeded with your filed evidence as filed if it wasn't for that event. That's what you're saying?

A. MR. MOE: That is correct.

The Amended SPG policy panel further adopted the testimony of the SPG Expert Panel as amended by the supported evidence listed in its July 8, 2008 letter during examination in chief.

Q. And, Sir, do you have any additions, deletions, or alterations to your evidence you would like to make at this time subject -- I mean, taking into account of course the big ones made in Exhibit 053-85?

A. MR. MOE: I have no additions at this time.

Q. Thank you. And, sir, do you adopt the evidence of the expert panel advanced by the SPG earlier as altered by Exhibit 053-85?

A. MR. MOE: Yes.

³⁸¹ Pembina Pipeline Corporation Closing Argument, pages 10-12

³⁸² Talisman Energy Inc. Argument, page 1

³⁸³ ATCO Midstream, BP Canada Energy Company, Inter Pipeline Fund and Spectra Energy Empress L.P. (the Amended SPG) Argument, page 2

³⁸⁴ ATCO Midstream, BP Canada Energy Company, Inter Pipeline Fund and Spectra Energy Empress L.P. (the Amended SPG) Argument, pages 1 and 2

³⁸⁵ Transcript Volume 30, page 4514, lines 6 through 21

Q. Thank you, sir. Subject to those comments, do you adopt the exhibits to which I have referred as being all or part of your responsibility in these proceedings?

A. MR. MOE: Yes, I do.³⁸⁶

The foregoing notwithstanding, the Amended SPG stated the following with respect to completeness of the Inquiry:³⁸⁷

16. That the record in this Inquiry is compromised and incomplete is a direct result of a decision to take NGTL federal which was only disclosed on Day 23 of the oral portion of the Inquiry. That changed things fundamentally. It had the effect of taking proposals for sweeping change to the NGTL tariff and their implementation outside the scope of the Inquiry as they would affect what TCPL itself has described as a federal undertaking.
17. The Group agrees that the record has never been fully developed with respect to NGTL's tariff proposals. It also notes, for example, that NGTL asserts that there were "substantial flaws in SPG's evidence that could have been explored through cross-examination of the SPG Policy Panel". Where there were or not cannot be determined without completion of the full process, including Argument and Reply. NGTL's assertion only highlights the hazard of basing recommendations or decisions on such a flawed and incomplete record.

The Amended SPG said that only re-filed evidence should be relied on. In that regard its Argument stated the following:³⁸⁸

18. For its part, Alberta Department of Energy contends little weight should be given to the redacted evidence except where the evidence has been tested through cross-examination. The Group agrees.
19. Only the re-filed evidence can be relied upon by the Board because it was the only evidence which underwent full testing, explanation and clarification required.
20. Nor is the "redacted" SPG evidence available, as Imperial/EMC suggests to be used opportunistically by parties opposite to support their positions... The proper approach is for neither the Board nor any parties to have regard to it all. It is also plain that where parties purported to cross-examine friendly witnesses with aligned interests (like Ziff Energy) on what became redacted SPG evidence – that evidence must also be disregarded.

Provident and IPF when questioned by Board Counsel indicated that they would have continued to support the entirety of the SPG evidence had it not been for the application by TCPL to move NGTL to Federal jurisdiction.³⁸⁹

Q. Gentlemen, I'd like to start off first by asking you a couple of clarification questions on your evidence as I did with the last panel.

I take it from what you said today that your original evidence and information request responses filed in this proceeding are not wrong or flawed in some way; rather, I take it that you're saying that that evidence is still on the record and that it is still correct and accurately reflects your position, but that now you've amended the evidence to reflect that this Board is no longer the appropriate tribunal to consider the original evidence as filed. Is that correct?

A. MR. LOCK: We agree.

³⁸⁶ Transcript Volume 28, page 4160, Lines 76 through 20

³⁸⁷ ATCO Midstream, BP Canada Energy Company, Inter Pipeline Fund and Spectra Energy Empress L.P. (the Amended SPG) Reply Argument, page 5

³⁸⁸ ATCO Midstream, BP Canada Energy Company, Inter Pipeline Fund and Spectra Energy Empress L.P. (the Amended SPG) Reply Argument, pages 5 and 6

³⁸⁹ Transcript Volume 30, pages 4704 and 4705

Q. And in other words, your panel would have continued to support all of your originally-filed evidence in this proceeding had the application by TransCanada to move NGTL under federal jurisdiction not been filed with the NEB; is that correct?

A. MR. LOCK: Yes, that's correct.

b) Board Conclusions

There are two variants to the issue under consideration, namely Supported but Un-sponsored Evidence and Unsupported and Un-sponsored Evidence. Although the Board considers that principles to be applied to Supported but Un-sponsored Evidence and Unsupported and Un-sponsored Evidence to be slightly different, the Board considers that the composite of relevant principles are the same, regardless of the type of proceeding in which they arise. The principles to be applied in this Inquiry should be consistent with those generally applied to a proceeding brought in the normal course by an applicant.

Supported but Un-sponsored Evidence

In the Board's ruling on February 15, 2008 on Supported but Un-sponsored Evidence discussed in Appendix 5, the Board stated:

Relevant but Un-sponsored Evidence, will customarily be accepted by the Board, but the Board acknowledges that caution should be exercised in evaluating evidence that has not been fully tested. Therefore, the Board has ordinarily discounted the weight of such evidence, or attributed to it no weight at all, however, the appropriate time for the Board to make the determination as to weight of relevant Un-sponsored Evidence is after it has heard all the evidence and has received the benefit of argument from all parties on all relevant matters, including the appropriate weight to accord the Un-sponsored Evidence.

In evaluating the weight to be accorded Un-sponsored Evidence, the Board must take into account the nature of the proceedings and the circumstances of the particular matter before the Board. Further, the Board must carefully consider issues of procedural fairness including the opportunities of parties to otherwise test and to refute the Un-sponsored Evidence through information requests, rebuttal evidence and argument. Finally, the Board must assess the materiality and potential prejudice to parties in each such instance prior to determining weight. It would ordinarily be inappropriate for the Board to make these determinations until after the close of the proceeding.³⁹⁰

The Board considers that the above approach is also applicable to Unsupported and Un-sponsored Evidence. In evaluating the weight to be accorded both the Supported but Un-sponsored Evidence and the Unsupported and Un-sponsored Evidence the Board has taken into account the nature of the proceedings and the separate and particular circumstances relevant to each category of such evidence. The Board has carefully considered issues of procedural fairness including the opportunities of parties to otherwise test and to refute both the Supported but Un-sponsored Evidence and the Unsupported and Un-sponsored Evidence. The Board has also assessed the materiality and potential prejudice to parties in each such instance. The Board will now address each category of Un-sponsored Evidence.

With respect to Supported but Un-sponsored Evidence, the Board does not consider the lack of a panel to speak to evidence that continues to be supported by its proponent necessarily disqualifies such evidence from consideration. However, the rules of procedural fairness require that parties have the ability to fully test and to refute the evidence that is adverse to their

³⁹⁰ Exhibit 053-21, Board Ruling on SPG Preliminary Matter re Un-sponsored Evidence

positions. Although the Supported but Un-sponsored Evidence (other than the evidence filed by the parties filing late requests to participate as discussed in Section 1.5 and in Appendix 5), in this proceeding has been tested through the information request process, none of this evidence has been adopted and attested to by witnesses under oath nor has it been tested through cross-examination. Ordinarily, in the absence of extenuating circumstances, evidence that is not subject to such attestation and testing must be given only circumspect consideration by the Board. With respect to the particular circumstances of this proceeding, the Board sees no reason to diverge from these principles simply because this proceeding is a Board initiated inquiry and sees no other circumstance that would suggest that these principles be applied differently to the Supported but Un-sponsored Evidence. Accordingly, the Board has attached only limited weight to the Supported but Un-sponsored Evidence.

Unsupported and Un-sponsored Evidence

First, the Board will address the submission of certain parties, that the amendment of filed evidence leads to an incomplete basis upon which the Board can proceed in making its recommendations.

The Board views the fact that some parties chose to alter and not to support the Unsupported and Un-sponsored Evidence, should not be considered a reason for the Board to decline to address related issues in the recommendations resulting from this Inquiry. That is, the Board does not consider the lack of supported evidence from potentially affected parties as constituting an incomplete record that would prevent the Board from reaching conclusions and making related recommendations on matters before the Inquiry. Had these same participants, elected not to participate in the Inquiry or, having decided to participate, chosen not to file evidence, the Board would be entitled to proceed to make its recommendations on the matters before it in the absence of these views. Participants were given the opportunity to fully present and support their evidence on issues considered by the Inquiry. Parties amending and choosing not to support their filed evidence did so voluntarily, and their actions can not be taken as a hindrance to the Board in arriving at its recommendations with respect to the scope of issues before it.

With respect to the Unsupported and Un-sponsored Evidence itself, the Board finds the following discussions with Board Counsel particularly useful in determining the appropriate treatment of such evidence. When questioning the Amended SPG panel the following exchange occurred:

Q. Good morning panel. Mr. Moe, I'd like to start with a couple of quick questions to follow up on some of your earlier discussions with counsel yesterday with respect to the decision of your panel to speak only to certain parts of the evidence that was filed on the record by the SPG. I take it from what you were saying yesterday, sir, that the evidence that you are no longer prepared to speak to is not wrong, it's not flawed in some way; rather, I take it you are saying that the evidence is still correct and accurately reflects your position, but this Board is no longer the appropriate tribunal to consider that evidence. Is that correct?

A. MR. MOE: I believe that would be generally correct, yes.

...

Q. Sure. In other words, your panel would have continued to support all of your filed evidence in this proceeding had the application by TransCanada to move NGTL under federal jurisdiction not been filed with the NEB; is that correct?

A. MR. MOE: Yes, that is correct. We always understood that there was a possibility that that application was made but that when it got made, then particularly the notion of public interest changes dramatically and our ability to consider issues within the confines of Alberta

become different than if – become different in the presence of the TransCanada application and the understanding that it's a federal enterprise.

Q. So you would have proceeded with your filed evidence as filed if it wasn't for that event. That's what you're saying?

A. MR. MOE: That is correct.³⁹¹

The Board also notes the following exchange between the witnesses for IPF and Provident and Board Counsel:

Q. Gentlemen, I'd like to start off first by asking you a couple of clarification questions on your evidence as I did with the last panel. I take it from what you said today that your original evidence and information request responses filed in this proceeding are not wrong or flawed in some way; rather, I take it that you're saying that that evidence is still on the record and that it is still correct and accurately reflects your position, but that now you've amended the evidence to reflect that this Board is no longer the appropriate tribunal to consider the original evidence as filed. Is that correct?

A. MR. LOCK: We agree.

Q. And in other words, your panel would have continued to support all of your originally-filed evidence in this proceeding had the application by TransCanada to move NGTL under federal jurisdiction not been filed with the NEB; is that correct?

A. MR. LOCK: Yes, that's correct.³⁹²

The Board considers that the Unsupported and Un-sponsored Evidence remains on the record of the Inquiry as originally filed and that the proponents continued to believe that the evidence was correct and accurate but they were unprepared to address or to support such evidence because of their belief that the Board was not the appropriate regulatory body to consider it following the application by TCPL to the NEB requesting the NEB to assume regulation of the NGTL System. Accordingly, the proponents of the evidence have not withdrawn their support on the basis of concern with the completeness or credibility of the evidence or because of concern with respect to the correctness of the positions or conclusions espoused therein, rather the occurrence of certain events have suggested to the proponents that the evidence should no longer be considered by the Board in the Inquiry and it is for those reasons that the evidence was now unsupported or untested by cross-examination in the proceeding.

With respect to the portion of the Unsupported and Un-sponsored Evidence by the SPG Expert Panel that was the subject of cross-examination, the Board considers that it should be treated in the same manner as any other evidence that was the subject of cross-examination despite the fact that it is no longer supported by the participants that sponsored that expert evidence. The Board makes this conclusion drawing on the assertions by the participants that the evidence remains accurate and that they would have continued to rely on that evidence except for the filing of the TransCanada application with the NEB. Further, much of that evidence was provided by independent experts, and is able to stand on its own, once tested through information requests and cross-examination, whether or not the sponsoring participant now wishes the Board to disregard it.

³⁹¹ Transcript Volume 30, pages 4513 – 4514, Exhibit 053-085, Bennett Jones LLP on Behalf of BP Energy Company, ATCO Midstream Ltd. and Spectra Energy Empress L.P., dated July 8, 2008 addressing Supported Evidence


³⁹² Transcript Volume 30, pages 4704 and 4705

With respect to the portion of the Unsupported and Un-sponsored Evidence that was not the subject of cross-examination, given the Board's rulings with respect to its continued ability to proceed with the Inquiry and to deal with matters within its scope as they may relate to NGTL and to the NGTL pipeline system, the Board considers that this evidence remains relevant. The Board notes the testimony by the witnesses for the participants that filed this evidence that the evidence remains accurate and that these participants would have continued to rely on that evidence except for the filing of the TransCanada application with the NEB. The parties that filed the evidence are not asking the Board to disregard such evidence because it is no longer accurate or credible, or that it is somehow misleading. In these circumstances, given the referenced testimony with respect to the continued accuracy of the evidence, the testing of evidence through information requests and the ability of parties to address the evidence in argument if they so choose, the Board considers it appropriate to consider such evidence to have greater weight than the Supported but Un-sponsored Evidence but somewhat less weight than evidence that was subjected to cross-examination.


APPENDIX 7 – RULING REGARDING MOTION AND QUESTION OF CONSTITUTIONAL LAW

Exhibit 001-42 August 15, 2008 RULING REGARDING MOTION AND NOTICE OF QUESTION OF CONSTITUTIONAL LAW	 Appendix 7 - Ex 001-42.pdf
---	--


APPENDIX 8 – SPG PRELIMINARY MATTER REGARDING UNSPONSORED EVIDENCE

Exhibit 053-21 February 15, 2008 SPG PRELIMINARY MATTER REGARDING UNSPONSORED EVIDENCE	 Appendix 8 - Ex 053-21.pdf
--	--


APPENDIX 9 – SHELL MOTION TO COMPEL BETTER RESPONSES TO SHELL INFORMATION REQUESTS TO THE STRADDLE PLANT GROUP

Exhibit 001-17 November 21, 2007 SHELL MOTION TO COMPEL BETTER RESPONSES TO SHELL INFORMATION REQUESTS TO THE STRADDLE PLANT GROUP	 Appendix 9 - Ex 001-17.pdf
--	---


APPENDIX 10 – SHELL REQUEST FOR DIRECTION AS TO THE SCOPE OF THE INQUIRY

Exhibit 001-27 February 1, 2008 SHELL REQUEST FOR DIRECTION AS TO THE SCOPE OF THE INQUIRY	 Appendix 10 - Ex 001-27.pdf
--	---


APPENDIX 11 – NEW MATTERS SUBMISSION BY ZIFF ENERGY MOTION BY NOVA GAS TRANSMISSION LTD.

Exhibit 001-33 May 15, 2008 NEW MATTERS SUBMISSION BY ZIFF ENERGY MOTION BY NOVA GAS TRANSMISSION LTD.	 Appendix 11 - Ex 001-33.pdf
--	---

APPENDIX 12 – BOARD PROCEDURAL RULING REGARDING IMPACT OF THE APPLICATION BY TCPL TO THE NEB

Exhibit 053-63 June 21, 2008 BOARD PROCEDURAL RULING REGARDING IMPACT OF THE APPLICATION BY TRANSCANADA PIPELINES LIMITED TO THE NATIONAL ENERGY BOARD	 Appendix 12 - Ex 053-63.pdf
--	---

APPENDIX 13 – RULING REGARDING MOTION AND NOTICE OF QUESTION OF CONSTITUTIONAL LAW

Exhibit 001-42 August 15, 2008 RULING REGARDING MOTION AND NOTICE OF QUESTION OF CONSTITUTIONAL LAW	 Appendix 13 - Ex 001-42.pdf
---	---



Calgary Office 640 - 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Notice

NOTICE OF BOARD INITIATED PROCEEDING APPLICATION NO. 1513726 INQUIRY INTO NGL EXTRACTION MATTERS

WHEREAS:

- (a) the Alberta Ethane Policy¹ will expire on June 30, 2008;
- (b) there has been significant evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and the related gas, transportation and natural gas liquids (NGL) markets since the implementation of the Alberta Ethane Policy in July 1990;
- (c) in Decision 2004-006² the Board requested parties to work with NOVA Gas Transmission Ltd. (NGTL) to review the current conventions and practices for extraction for NGLs off the NGTL system which resulted in the *NGL Extraction Convention Task Force Report* dated September 2005 (the Task Force Report); and
- (d) the Board in a letter dated July 24, 2006 reluctantly accepted the Task Force Report despite concerns that many of the key issues and perceived inequities relating to extraction remained unresolved and indicated that it would consider further processes to address these issues,

Take Notice that The Alberta Energy and Utilities Board (EUB or Board) pursuant to Section 21 of the *Energy Resources Conservation Act* RSA 2000, c. E-10, Section 94 of the *Oil and Gas Conservation Act* RSA 2000, c. O-6 and Section 46(1) of the *Public Utilities Board Act* RSA 2000, c. P-45 will hold an inquiry into matters related to NGL extraction from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (the Inquiry).

The Inquiry will examine issues related to NGL extraction from the perspective of maximizing the economic, orderly and efficient development of Alberta's natural resources in the public interest. The issues that the Inquiry will examine include, without limitation:

- existing extraction conventions
- potential dilution of the common stream energy content by lean gas associated with Coal Bed Methane (CBM)
- growing intra-Alberta consumption demand for natural gas
- potential for northern gas; and
- Alberta regulated Straddle facilities on NEB regulated pipelines.

¹ As reflected in IL 90-09 dated July 16, 1990, Section 35 of the *Oil and Gas Conservation Act* RSA 2000, c. O-6 and Part 9.1 of the *Oil and Gas Conservation Regulations* AR 151/71

² Decision 2004-006 – Solex Gas Processing Corp. Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines, dated January 27, 2004.

Purpose of the Inquiry

The evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and the related gas, transportation and NGL markets since the implementation of the Alberta Ethane Policy in July 1990 (set to expire June 30, 2008) have convinced the Board that there is a need for a timely and comprehensive re-examination of historical conventions and practices with respect to the extraction of NGLs on EUB regulated pipelines and facilities. The need for such a review is made further apparent in light of anticipated future developments including the use of EUB regulated pipelines to transport increased amounts of gas sourced outside of Alberta, development of sources of CBM and the growing market for gas within the Province. This Inquiry will consider these conventions and practices to determine if changes are required in the public interest.

Particulars of the Inquiry

A Preliminary Scoping Document and a Preliminary List of Issues to be addressed by the Inquiry and a Tentative Procedural Schedule have been documented and are available for review on the Board's website through IAR Query by selecting Application No. 1513726. The Board requests that parties express their intent to participate in this Inquiry by submitting their intention to participate and comments on the Preliminary Scoping Document and a Preliminary List of Issues.

Please note that neither the EUB cost claim nor intervener funding process will apply to this matter and that all costs incurred by parties will be of their own account. Despite this, the Board is hopeful that parties representing all affected business areas will participate in this Inquiry including:

- Producing companies
- Midstream companies
- Aggregators
- Straddle plant owners and operators including proponents of EUB regulated facilities on NEB regulated pipelines
- Gas transmission pipeline owners and operators
- Shippers on gas transmission pipelines
- Liquids pipeline operators
- Field plant operators with interests in NGLs
- Alberta based Petrochemical plant owners and operators
- Industry groups including IGCAA, CAPP, SEPAC, Canadian Society for Unconventional Gas
- Propane plus market stakeholders
- Consumer groups
- Alberta Government Ministries including those responsible for energy and industry related matters; and
- The Governments, producers, pipeline operators in British Columbia, the Northwest Territories, Yukon and Alaska to the extent they have interests in the transportation of natural gas through EUB regulated facilities.

To File an Intention to Participate

Any party (Participant) wishing to register their intention to participate and submit comments on the Preliminary Scoping Document and a Preliminary List of Issues should submit a letter (Participation Letter) setting out their interest in the Inquiry and contact information by **June 15, 2007**. Each Participant should include with the Participation Letter any comments it wishes to make on the Preliminary Scoping Document, the Preliminary List of Issues or the Tentative Procedural Schedule. Following submissions, the Board will communicate the Final Scoping Document and a Final List of Issues for the Inquiry. Please submit the Participation Letter and comments on the Preliminary Scoping Document and a Preliminary List of Issues electronically to the Board at EUB.UTL@eub.ca. Notification regarding further scheduling or process will only be provided to registered parties.

Process

The Tentative Process Schedule stipulates the filing of Direct Evidence by Participants on matters identified within the Final List of Issues by July 23, 2007. Participant submissions will be followed by Information Requests and Responses, Rebuttal Evidence and an oral hearing anticipated to be held in November 2007. The Board anticipates engaging the services of an independent consultant whose Report would be filed in the Inquiry. Direct Evidence submissions by Participants should address all matters on the Final List of Issues on which the Participant has a position (supporting or opposing) utilizing, where possible, the format employed in the Preliminary List of Issues.

Parties to this proceeding should comply with the Board's general electronic filing guidelines, which require that all e-mails clearly indicate in the "subject" line, the relevant application number, the date, the nature of the submission and the party making the submission. The Board further requests the cooperation of parties by submitting any documents in either Microsoft Word format or an OCR version of any PDF documents.

If you have any questions regarding this matter, please contact either Kim Eastlick by email at kim.eastlick@eub.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@eub.ca or by telephone at (403) 297-3539.

Issued at Calgary, Alberta on June 4, 2007.

ALBERTA ENERGY AND UTILITIES BOARD
Douglas A. Larder, Q.C., General Counsel

EUB INQUIRY INTO NGL EXTRACTION MATTERS**PRELIMINARY SCOPING DOCUMENT****1. Introduction**

The Alberta Energy and Utilities Board (EUB or Board) has undertaken to conduct an inquiry into matters related to natural gas liquids (NGL) extraction from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (the Inquiry).

The Inquiry will examine issues related to NGL extraction from the perspective of maximizing the economic, orderly and efficient development of Alberta's natural resources in the public interest. The issues that the Inquiry will examine include, without limitation:

- existing extraction conventions
- potential dilution of the common stream energy content by lean gas associated with Coal Bed Methane (CBM)
- growing intra-Alberta consumption demand for natural gas
- potential for northern gas; and
- Alberta regulated Straddle facilities on NEB regulated pipelines.

2. Purpose of the Inquiry

The evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and related gas, transportation and NGL markets since the implementation of the Alberta Ethane Policy¹ in July 1990 (set to expire June 30, 2008) have convinced the Board that there is a need for a timely and comprehensive reexamination of existing rules, contractual arrangements and practices with respect to the extraction of NGLs from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (NGL Extraction Conventions). The need for such a review is made further apparent in light of anticipated future developments including potential use of EUB regulated pipelines to transport increased amounts of gas sourced outside of Alberta, increasing development of CBM and the growing market for gas within the Province. This Inquiry will consider the NGL Extraction Conventions to determine if changes are required in the public interest.

3. Assumptions

The Board considers that it would be beneficial for parties to understand the general assumptions that the Board has relied upon in scoping the issues for the Inquiry. Accordingly, the Board has listed below the assumptions that it has relied upon in preparing this Preliminary Scoping Document. The Board recognizes that these assumptions can sometimes be in conflict. While the Board would not expect to deal at length with these assumptions, parties are invited to identify concerns respecting these assumptions in their June 15 submissions and to substantiate public interest reasons for altering any of these assumptions in their later submissions.

- (a) In providing for the economic, orderly and efficient development of Alberta's natural resources it is in the Alberta public interest to encourage to the maximum extent

¹ As reflected in IL 90-09 dated July 16, 1990, Section 35 of the *Oil and Gas Conservation Act* RSA 2000, c. 0-6 and Part 9.1 of the *Oil and Gas Conservation Regulations* AR 151/71

practical, the extraction of NGLs within the Province of Alberta, for use, upgrading or sale within Alberta while providing the NGLs owners with fair compensation.

- (b) Clear rules and procedures with respect to NGL ownership and extraction are in the public interest.
- (c) Unless the public interest otherwise requires, producers may extract NGLs from their own production, at the field plant upstream of injection into an EUB regulated pipeline.
- (d) It is in the public interest to minimize proliferation of NGL extraction facilities where proliferation may result in decreased net NGL extraction within Alberta, increased net energy use per unit of NGL extracted within Alberta and/or result in greater land use or environmental impact than is necessary.
- (e) It is in the public interest to optimize the energy efficiency of NGL extraction.
- (f) It is in the public interest to maintain a viable extraction and petrochemical industry in the Province.
- (g) It is in the public interest to maximize efficient use of EUB regulated transmission pipeline infrastructure.
- (h) It is in the public interest to maintain liquid and efficient markets for natural gas.
- (i) NGL Extraction Conventions and the Alberta Ethane Policy have historically worked in the general public interest but require review at this time.
- (j) Presently the owner of the natural gas being transported on EUB regulated pipelines has the right to sell its equivalent energy value of the natural gas from the common stream or to take redelivery at an existing point of delivery of its equivalent energy value of the natural gas from the common stream
- (k) Absent a public interest reason to differentiate among EUB regulated pipelines, Producer/Receipt shipper rights with respect to NGL ownership should be equivalent.

4. Objectives

The Board has established the following objectives for the Inquiry:

- (a) Obtain comprehensive stakeholder participation in the Inquiry.
- (b) Generate an Inquiry Decision in early 2008 which will:
 - i. Articulate clear principles relating to NGL extraction aimed at codifying appropriate extraction conventions with specific directions, if required, to EUB regulated pipelines with respect to tariff amendments and other directions to reflect the findings of the Board.
 - ii. Identify new conditions, if any, required when issuing facility licenses, permits or approvals, to reflect the findings of the Board.
 - iii. Identify any future steps that are required in order to complete implementation of Inquiry principles, findings and directions.

5. Preliminary List of Inquiry Issues

See attached Appendix A.

6. Tentative Procedural Schedule

See attached Appendix B.

APPENDIX A

EUB INQUIRY INTO NGL EXTRACTION MATTERS

PRELIMINARY LIST OF ISSUES

1. Overview of NGL Extraction Conventions and Markets in Alberta
 - a. Existing Pipeline and Straddle plant NGL extraction rights, conventions and practices on the following EUB regulated pipelines:
 - i. NGTL
 - ii. ATCO Pipelines
 - iii. AltaGas
 - b. NGL Extraction Conventions, current and proposed for other EUB regulated facilities on non EUB regulated pipelines (i.e. Aux Sable Canada Ltd. North Sable Extraction Plant - Fort Saskatchewan)
 - c. Alberta NGL short and long term supply forecasts and short and long term Alberta NGL Market forecasts
 - d. Straddle plant capacities and utilization (existing and forecasted)
 - e. NGL field extraction capacities and utilization (existing and forecasted)
 - f. Timing and anticipated NGL content of gas presently sourced and forecasted to be sourced, from outside Alberta to be transported utilizing EUB regulated pipelines.
 - g. Existing and forecast quantity of gas consumed within Alberta, exported from Alberta without NGL extraction, and off-gases from oilsands upgrading
2. In light of the June 30, 2008 expiry of the existing Alberta Ethane Policy, is it necessary to implement an updated ethane policy to continue to provide for the economic, orderly and efficient development of Alberta's natural resources and to ensure a sustainable extraction and petrochemical industry in the Province?
3. Perceived inequities with Present NGL Extraction Conventions on NGTL:
 - a. Producer/Receipt shippers delivering gas with below common stream NGL content into NGTL who also hold export delivery service receive benefit of common stream NGL content.
 - b. Producer/Receipt shippers delivering gas with above common stream NGL content into NGTL who also hold export delivery service only receive benefit of common stream NGL content.
 - c. Producer/Receipt shippers with production that enters the NGTL system downstream of extraction plants who also hold export delivery service obtain value for NGL in the common stream even though their gas cannot be processed physically.
 - d. Producer/Receipt shippers with production that enters the NGTL system that is delivered upstream of an extraction facility may lose the benefit of NGL extraction.
 - e. Double Dipping: Producer/Receipt shippers who extract (NGLs) in the field who also hold export delivery service obtain value for NGL in the common stream.

- f. Producer/Receipt shippers who do not hold export delivery service cannot obtain direct access to the NGLs in the gas stream once the gas enters the NGTL system.
- g. Producers who do not hold export delivery service and therefore do not share in value of NGL in the common stream are non-the-less responsible for NGL royalty payments.
- 4. Clarification of public interest criteria related to "sidestreaming"¹ projects with respect to matters such as overall energy efficiency, impact of facilities proliferation, NGL entitlement, equity (fairness) and optimization of resource value.
- 5. Potential dilution of the common stream energy content as a result of the increasing importance of Coal Bed Methane (CBM) and potential solutions including alternative lean gas facilities design criteria.
- 6. Consideration of Issues related to NGL extraction from gas sourced from outside of Alberta that is transported on EUB regulated pipelines, including understanding positions of:
 - a. Ex-Alberta producers, shippers, governments, connecting pipelines, and capital markets; and
 - b. Alberta producers, shippers, pipelines, extraction industry, petrochemical industry and government
- 7. Consideration of *NGL Extraction Convention Task Force* Report alternatives including financial impact to gas and NGL market participants, and impacts to existing contracting practices, NIT transactions, storage arrangements, ex-Alberta (upstream and downstream) implications and NGTL rate implications.
 - a. Status Quo
 - b. Equalization
 - c. Single Value Bucket
 - d. Receipt Contracting
 - e. Producer Directed
 - f. Regulated Business
- 8. Entitlement to NGL Value on ATCO Pipelines system
 - a. Review of existing practices, any perceived inequities and opportunities for NGL extraction
 - b. Consideration of *NGL Extraction Convention Task Force* Report alternatives as they may apply
 - c. Consideration of pipeline interconnection issues
 - d. Tariff and rate implications of changes

¹ "Sidestreaming" refers to facilities that would access gas from the main transportation system to extract NGLs and then reinject the lean gas to the commingled stream, reducing the rich gas that would have been processed in existing facilities.

9. Entitlement to NGL Value on AltaGas system
 - a. Review of existing practices, any perceived inequities and opportunities for NGL extraction
 - b. Consideration of *NGL Extraction Convention Task Force* Report alternatives as they may apply
 - c. Consideration of pipeline interconnection issues
 - d. Rate implications of changes
10. Is it desirable to implement NGL component tracking gas on transmission pipelines?
Exploration of potential means and methodologies to be used to implement component measurement and tracking?
11. Consideration of NGL Extraction Conventions with respect to EUB regulated facilities on non EUB regulated pipelines including the form of licenses, permits or approvals.

APPENDIX B**EUB INQUIRY INTO NGL EXTRACTION MATTERS****Tentative Procedural Schedule**

Step	Date(s) (2007)
Inquiry Notice and Scope Submission Request	June 1
Scope Submissions Due	June 15
Inquiry Scope Finalized	July 6
Parties Submissions (simultaneous)	July 23
Information Requests to Parties	August 7
Information Responses	August 20
Rebuttal Submissions	September 10
Expert Submission	September 24
Information Requests to Expert	October 2
Information Responses	October 9
Rebuttal to Expert Evidence	October 23
Inquiry	November 5-30 (as required)



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

July 6, 2007

APPLICATION NO. 1513726 INQUIRY INTO NGL EXTRACTION MATTERS

On June 4, 2007, the Alberta Energy and Utilities Board (the Board or EUB) issued a Notice with respect to an Inquiry into Natural Gas Liquids¹ Extraction Matters (the Inquiry). Attached to the Notice were a Preliminary Scoping Document, a Preliminary List of Issues and a Tentative Procedural Schedule. Interested parties were requested to submit a Participation Letter accompanied by comments on the attachments by June 15, 2007. Participation Letters, with or without comments on the attachments to the notice, were received from parties (Parties), all of whom are listed in Attachment 1.

On June 27, 2007, the Board issued a letter informing Parties of a change to the date for evidentiary submissions and the decision of the Board not to hold a pre-hearing conference.

The purposes of this letter are to respond to the comments from Parties and to finalize the Preliminary Scoping Document and the Preliminary List of Issues, describe the role of the independent expert to be engaged by the Board (the Inquiry Expert) and to revise the Procedural Schedule for the Inquiry.

Scope

Preliminary Scoping Document

Although some Parties questioned the meaning of several of the Board's assumptions and pointed out the Board's recognition of the possible conflict among assumptions, in general, the Preliminary Scoping Document received little comment. Parties also requested clarification on the intended outcomes of the Inquiry.

With respect to the intended outcomes of the Inquiry, the Board addressed these in Section 4 of the Preliminary Scoping Document. For greater clarity, however, the Board anticipates that the outcomes of the Inquiry may include any of the following:

- A description of current or proposed NGL extraction conventions on EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines (NGL Extraction Conventions), current issues and trends in gas supply, composition and NGL recovery;

¹ For the purposes of the Inquiry, "Natural Gas Liquids" or "NGLs" means ethane, propane, butane and pentanes plus derived from natural gas.

- Findings as to entitlement to NGL extraction rights with respect to the common stream of EUB regulated pipelines;
- Direction to parties to implement changes to NGL Extraction Conventions including tariff amendments;
- Guidelines or other criteria to assist industry with respect to the economic, orderly and efficient development of Alberta's natural resources as it may relate to NGL extraction rights and facilities development including matters related to sidestreaming² and co-streaming;³
- The identification of new conditions for new facility licenses, permits or approvals; and
- Potential recommendations to the Government of Alberta on policy matters beyond the mandate of the Board.

In light of the absence of significant comment from Parties, the Board does not believe a change is required to the Preliminary Scoping Document other than with respect to the timing of a Board decision. The Board now anticipates an Inquiry Decision mid-year 2008. Attachment 2 is the Final Scoping Document for the Inquiry.

Preliminary List of Issues

Comments received from Parties on the Preliminary List of Issues fall generally into three principal categories:

- The scope is overly broad and should be focused in two general areas:
 - NGL Extraction Conventions
 - Efficient resource development and gas composition issues
- Consideration of the Ethane Policy should be removed from the scope of the Inquiry; and
- The need to consider the impact to existing contractual arrangements and infrastructure investments from any change to the NGL Extraction Conventions.

The Board intends to maintain a broad scope for the Inquiry so that the full range of complex and interrelated issues relating to resource development and NGL extraction can be examined and understood. However, the Board agrees that the issues identified in the Preliminary List of Issues can be grouped to achieve a clearer focus for the Inquiry. This grouping of issues should assist parties and address the three general areas on which Parties commented.

The focus of the Inquiry is on three interrelated principal issues (the Inquiry Principal Issues), each of which may be stated in terms of a question for the Board to address. Each of the Inquiry Principal Issues requires consideration of several interrelated sub-issues:

² The Board has refined the definition of "Sidestreaming" that was referred to in the Preliminary List of Issues. "Sidestreaming" refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream upstream of existing straddle plant facilities thereby reducing the NGL content of the gas (richness of the gas) that would otherwise have been available for processing at the downstream straddle plant facilities.

³ Co-streaming refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream downstream of existing straddle plant facilities thereby reducing the volume of gas that would otherwise have been available for processing at those straddle plant facilities.

1. Do the existing NGL Extraction Conventions need to be changed in order to address perceived inequities in the existing conventions, thereby promoting the economic, orderly and efficient development of Alberta's natural resources? If they need to be changed, how should they be changed to deal with these inequities?

In addressing this issue the Board must consider:

- (a) What are the NGL Extraction Conventions and how are they documented or otherwise established?
- (b) Who has the legal entitlement to NGL extraction rights from the common stream?
- (c) Are the NGL Extraction Conventions consistent with the legal entitlement to NGL extraction rights?
- (d) What inequities result from application of the NGL Extraction Conventions?
- (e) What options (and the pros and cons of each), including without limitation those considered in the NGL Extraction Convention Task Force (NECTF) Report, are available to address these inequities?
- (f) What are the potential impacts to all stakeholders of suggested changes to the NGL Extraction Conventions?

This question relates in whole or in part to Issues 1, 3, 7, 8, 9, 10 and 11 on the Preliminary List of Issues.

2. In addressing the perceived inequities with the NGL Extraction Conventions, does the Board need to consider if further modifications to these conventions and/or the development of other rules and guidelines are required in the interest of:
 - promoting the economic, orderly and efficient development of Alberta's natural resources; and/or
 - sustaining and developing the natural gas industry, Alberta's pipeline, extraction and petrochemical industries?

If modifications to the NGL Extraction Conventions or new rules and guidelines are required, what should they be?

In addressing this issue the Board must consider:

- (a) What are the relevant forecasts to consider?
- (b) How can the development of Alberta's gas resources, both NGL rich gas and lean gas, be encouraged without creating inequities with respect to NGL extraction rights, impacting efficiencies and the sustainability of the extraction and petrochemical industries or causing undue impact to ratepayers?
- (c) How can the extraction and upgrading of NGLs within the Province of Alberta be encouraged to the maximum extent practical while providing the owners of NGL extraction rights with fair compensation?
- (d) Should sidestreaming, co-streaming, or the ability to by-pass extraction be restricted?

- (e) If the answer to (2d) is "yes", what restrictions are appropriate and what are the rules and criterion to be applied in assessing when a restriction is to be applied and in determining what the nature of the restriction will be?
- (f) Do NGL extraction conventions as they apply to all EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines need to be consistent in order to avoid unfair competitive advantages or unfairness to shippers, pipeline/facility owners or buyers of natural gas or NGLs?
- (g) Are modifications desirable in order to encourage the use of Alberta pipeline and extraction facilities by gas sourced from outside of Alberta?
- (h) What are the potential impacts to all stakeholders of suggested modifications to the NGL Extraction Conventions and from any new rules or guidelines?

This question relates in whole or in part to Issues 1, 2, 4, 5, 6, 8, 9, 10 and 11 on the Preliminary List of Issues.

3. In the event that any changes to the existing NGL Extraction Conventions result from the Inquiry or in the event that the Board provides for the development of new rules or guidelines relating to NGL extraction matters, how should these changes be implemented?

In addressing this question the Board must consider:

- (a) What action is required and by whom in order to implement changes to the NGL Extraction Conventions and/or new rules or guidelines and over what period of time?
- (b) Who should bear any associated costs?
- (c) Do any existing arrangements need to be grandfathered?
- (d) Do these new conventions, rules and guidelines require periodic reconsideration?

In considering the Inquiry Principle Issues the Board will, as requested by many parties, have regard for the impact on existing contracts and existing infrastructure investment.

The Board does not intend to review the new Incremental Ethane Extraction Program policy announced by Alberta Energy on September 29, 2006, nor does it intend to undertake a review of the terms and conditions of the existing Ethane Policy. However, the Board may, in the interest of the economic, orderly and efficient development of Alberta's natural resources, consider matters relevant to the public interest principles behind the Ethane Policy and may direct measures or make recommendations directed at continuing a sustainable extraction and petrochemical industry in the Province.

With the above focus, the Board trusts that the context, relevance and interdependence of the issues outlined in the Preliminary List of Issues have been clarified. This additional focus is sufficient, in the Board's view, to proceed to the submission of evidence by parties without holding a pre-hearing conference and with minimal change to the Preliminary List of Issues. Attachment 3 is the Final List of Issues for the Inquiry.

Parties are invited, but not required, to organize their evidence submissions, information requests and argument by addressing the Inquiry Principal Issues and sub-issues. In following this format, Parties are not restricted to the above list of sub-issues in making their submissions and may

address other sub-issues within the scope of the proceeding. This suggestion is intended to ensure that the respective positions of Parties on the issues before the Inquiry are organized, clearly presented and easily contrasted which should lead to a more efficient process overall.

Role of Inquiry Expert

In preparing the initial scope for the Inquiry it became evident that the assistance of a recognized industry consulting firm with expertise in matters before the Inquiry, independent of all Parties and the Board, would be of assistance when considering the various issues to be examined by the Inquiry. The Board has engaged Ziff Energy Group as the Inquiry Expert. The Inquiry Expert will have the responsibilities outlined below.

1. The Inquiry Expert will consider the submissions from Parties to determine which areas require clarification and to identify any informational gaps in the evidence before the Board. The Inquiry Expert will submit information requests to try and achieve clarification and to fill in information gaps. Where it is unable to obtain missing information from parties it will attempt to provide the necessary information in a report (Report) to be filed with the Inquiry. Missing information to be supplied by the Inquiry Expert will primarily be with respect to providing data and forecasting information as well as completing background information from Alberta and other relevant jurisdictions.
2. The Inquiry Expert will conduct an analysis of the evidence of each Party and where the evidence is in significant conflict, the Inquiry Expert will comment in the Report on the points of conflict and highlight the strengths and weaknesses of the positions of the respective Parties.
3. The Inquiry Expert may also identify and assess in the Report one or more possible alternative approaches (or modifications to proposals put forward by Parties) to the matters before the Inquiry. The Inquiry Expert will advance an alternative approach(s) if it is of the opinion that such an alternative approach(s) would likely align with the overall Alberta public interest to a greater extent than any of the approaches suggested by the Parties. The Report will also assess the benefits, limitations and market impacts of any suggested alternative approach(s).

Dealings between the Board and the Inquiry Expert will be limited to administrative and financial matters. Neither the Board nor Board staff will have contact with the Inquiry Expert or review any drafts of the Report.

The Report will be made available to Parties and the Board at the same time. The Board and Parties will have the opportunity to ask the Inquiry Expert information requests and to cross-examine the Inquiry Expert at the hearing. In addition, Parties will be given the opportunity to file written rebuttal evidence in response to the Report.

The Inquiry Expert will not cross-examine Parties and will not provide final argument in the proceedings.

In its deliberations, the Board will consider the Report, information request responses and testimony of the Inquiry Expert as additional evidence for its consideration bearing in mind the independent nature of that evidence.

Procedural Schedule

In light of the Board's June 27, 2007 letter extending the date for filing of evidentiary submissions the Board has modified the procedural schedule. The Revised Procedural Schedule is provided in Attachment 4. The Board has revised the Procedural Schedule at this time to allow parties sufficient time to plan for critical dates and to arrange for the appearance of witness at the hearing. Given the number of parties to the Inquiry and the need to coordinate the schedules of many witnesses, the Board anticipates that it will be difficult to provide for further extensions to the commencement date of the hearing.

As stated in the Board's June 27, 2007 letter, the Board is optimistic that Parties with like interests will now have the opportunity to work together to present joint submissions and seat joint panels for the oral portion of the Inquiry. This would assist all Parties by improving efficiency of the process.

Inquiry Background Documentation

The Board has added the following materials to the record of this proceeding as background documentation which may be of assistance to Parties in the preparation of their submissions.

ERCB Report D88-D: Alberta Ethane Policy, Report on Implementation (April 1988)

NGL Extraction Convention Task Force (NECTF) Report (September 28, 2005)

Decision D 96-07 Gulf Canada Resources Limited - Strachan Gas Plant Approval Amendment
NGTL Gas Sidestreaming Application (September 26, 1996)

Decision 2004-006 Solex Gas Processing Corp. - Application to Amend a Gas Processing
Scheme and for Natural Gas Pipelines (January 27, 2004)

Information Letter IL 90-09 Government of Alberta Ethane Policy Implementation Procedures
(July 16, 1990)

Board Letter to Interested Parties in Response to NGL NECTF Report (July 24, 2006)

If you have any questions regarding this matter, please contact either Kim Eastlick by email at kim.eastlick@eub.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@eub.ca or by telephone at (403) 297-3539.

Yours truly,

(sent via email)

Heather Gnenz and Kim Eastlick
Application Officers

cc. Interested Parties

Attachments

Attachment 1 – List of Parties

Alberta Department of Energy (ADOE)
 Alberta Envirofuels Inc. (AEF)
 Alberta Ethane Gathering System, L.P. (AEGS)
 Alliance Pipeline Ltd. (Alliance)
 AltaGas Ltd. (AltaGas)
 AltaGas Utilities Inc. (AUI)
 ATCO Midstream Ltd.
 ATCO Pipelines (AP)
 Aux Sable
 BP Canada Energy Company (BP)
 Canadian Association of Petroleum Producers (CAPP)
 Canadian Chemical Producers' Association (CCPA)
 Cargill Limited (Cargill)
 ConocoPhillips Canada Limited (ConocoPhillips)
 Coral Energy Canada Inc. (Coral)
 Devon Canada Corporation (Devon)
 Direct Energy Marketing Limited (DEML)
 Dow Chemical Canada Inc. (Dow)
 EnCana Corporation (EnCana)
 Export Users Group (EUG)
 FB Energy Canada Corp.
 Gaz Métro Limited Partnership (Gaz Métro)
 Government of the Northwest Territories (GNWT)
 Granite Gas Products Inc.
 Husky Energy Marketing Inc. (Husky)
 Imperial Oil Resources & ExxonMobil Canada Energy (the Companies)
 Industrial Gas Consumers Association of Alberta (IGCAA)
 Inter Pipeline Fund (Inter Pipeline)
 Keyera Energy Partnership (Keyera)
 Kinder Morgan Cochin ULC (Cochin)
 Nexen Inc. (Nexen)
 NOVA Gas Transmission Ltd. (NGTL)
 NOVA Chemicals Corporation (NOVA Chemicals)
 Pacific Gas and Electric Company (PG&E)
 Pembina Pipeline Corporation (Pembina)
 Provident Energy Ltd.
 Quicksilver Resources Canada Inc. (QRCI)
 Shell Canada Limited (Shell)
 Spectra Energy Empress L.P. (Spectra)
 State of Alaska
 Straddle Plant Group
 Talisman Energy Inc. (Talisman)
 Tenaska Marketing Canada, a division of TMV Corp. (Tenaska)
 Taylor NGL Limited Partnership
 Terasen Gas Inc. (TGI)
 Utilities Consumer Advocate (UCA)
 Union Gas Limited (Union)

Attachment 2
EUB INQUIRY INTO NGL EXTRACTION MATTERS

FINAL SCOPING DOCUMENT

1. Introduction

The Alberta Energy and Utilities Board (EUB or Board) has undertaken to conduct an inquiry into matters related to natural gas liquids (NGL) extraction from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (the Inquiry).

The Inquiry will examine issues related to NGL extraction from the perspective of maximizing the economic, orderly and efficient development of Alberta's natural resources in the public interest. The issues that the Inquiry will examine include, without limitation:

- existing extraction conventions
- potential dilution of the common stream energy content by lean gas associated with Coal Bed Methane (CBM)
- growing intra-Alberta consumption demand for natural gas
- potential for northern gas; and
- Alberta regulated Straddle facilities on NEB regulated pipelines.

2. Purpose of the Inquiry

The evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and related gas, transportation and NGL markets since the implementation of the Alberta Ethane Policy¹ in July 1990 (set to expire June 30, 2008) have convinced the Board that there is a need for a timely and comprehensive reexamination of existing rules, contractual arrangements and practices with respect to the extraction of NGLs from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (NGL Extraction Conventions). The need for such a review is made further apparent in light of anticipated future developments including potential use of EUB regulated pipelines to transport increased amounts of gas sourced outside of Alberta, increasing development of CBM and the growing market for gas within the Province. This Inquiry will consider the NGL Extraction Conventions to determine if changes are required in the public interest.

3. Assumptions

The Board considers that it would be beneficial for parties to understand the general assumptions that the Board has relied upon in scoping the issues for the Inquiry. Accordingly, the Board has listed below the assumptions that it has relied upon in preparing this Final Scoping Document. The Board recognizes that these assumptions can sometimes be in conflict.

- (a) In providing for the economic, orderly and efficient development of Alberta's natural resources it is in the Alberta public interest to encourage to the maximum extent practical, the extraction of NGLs within the Province of Alberta, for use, upgrading or sale within Alberta while providing the NGLs owners with fair compensation.

¹ As reflected in IL 90-09 dated July 16, 1990, Section 35 of the *Oil and Gas Conservation Act* RSA 2000, c. 0-6 and Part 9.1 of the *Oil and Gas Conservation Regulations* AR 151/71

- (b) Clear rules and procedures with respect to NGL ownership and extraction are in the public interest.
- (c) Unless the public interest otherwise requires, producers may extract NGLs from their own production, at the field plant upstream of injection into an EUB regulated pipeline.
- (d) It is in the public interest to minimize proliferation of NGL extraction facilities where proliferation may result in decreased net NGL extraction within Alberta, increased net energy use per unit of NGL extracted within Alberta and/or result in greater land use or environmental impact than is necessary.
- (e) It is in the public interest to optimize the energy efficiency of NGL extraction.
- (f) It is in the public interest to maintain a viable extraction and petrochemical industry in the Province.
- (g) It is in the public interest to maximize efficient use of EUB regulated transmission pipeline infrastructure.
- (h) It is in the public interest to maintain liquid and efficient markets for natural gas.
- (i) NGL Extraction Conventions and the Alberta Ethane Policy have historically worked in the general public interest but require review at this time.
- (j) Presently the owner of the natural gas being transported on EUB regulated pipelines has the right to sell its equivalent energy value of the natural gas from the common stream or to take redelivery at an existing point of delivery of its equivalent energy value of the natural gas from the common stream
- (k) Absent a public interest reason to differentiate among EUB regulated pipelines, Producer/Receipt shipper rights with respect to NGL ownership should be equivalent.

4. Objectives

The Board has established the following objectives for the Inquiry:

- (a) Obtain comprehensive stakeholder participation in the Inquiry.
- (b) Generate an Inquiry Decision in mid year 2008 which will:
 - i. Articulate clear principles relating to NGL extraction aimed at codifying appropriate extraction conventions with specific directions, if required, to EUB regulated pipelines with respect to tariff amendments and other directions to reflect the findings of the Board.
 - ii. Identify new conditions, if any, required when issuing facility licenses, permits or approvals, to reflect the findings of the Board.
 - iii. Identify any future steps that are required in order to complete implementation of Inquiry principles, findings and directions.

5. Preliminary List of Inquiry Issues

See attached Attachment 3.

6. Tentative Procedural Schedule

See attached Attachment 4.

Attachment 3

EUB INQUIRY INTO NGL EXTRACTION MATTERS

FINAL LIST OF ISSUES

1. Overview of NGL Extraction Conventions and Markets in Alberta
 - a. Existing Pipeline and Straddle plant NGL extraction rights, conventions and practices on the following EUB regulated pipelines:
 - i. NGTL
 - ii. ATCO Pipelines
 - iii. AltaGas Utilities Inc. (AUI)
 - b. NGL Extraction Conventions, current and proposed for other EUB regulated facilities on non EUB regulated pipelines (i.e. Aux Sable Canada Ltd. North Sable Extraction Plant - Fort Saskatchewan)
 - c. Alberta NGL short and long term supply forecasts and short and long term Alberta NGL Market forecasts
 - d. Straddle plant capacities and utilization (existing and forecasted)
 - e. NGL field extraction capacities and utilization (existing and forecasted)
 - f. Timing and anticipated NGL content of gas presently sourced and forecasted to be sourced, from outside Alberta to be transported utilizing EUB regulated pipelines.
 - g. Existing and forecast quantity of gas consumed within Alberta, exported from Alberta without NGL extraction, and off-gases from oilsands upgrading
2. In light of the June 30, 2008 expiry of the existing Alberta Ethane Policy, is it necessary, for the economic, orderly and efficient development of Alberta's natural resources, or other public interest reasons to implement measures to ensure a sustainable extraction and petrochemical industry in the Province?
3. Perceived inequities with Present NGL Extraction Conventions on NGTL:
 - a. Producer/Receipt shippers delivering gas with below common stream NGL content into NGTL who also hold export delivery service receive benefit of common stream NGL content.
 - b. Producer/Receipt shippers delivering gas with above common stream NGL content into NGTL who also hold export delivery service only receive benefit of common stream NGL content.
 - c. Producer/Receipt shippers with production that enters the NGTL system downstream of extraction plants who also hold export delivery service obtain value for NGL in the common stream even though their gas cannot be processed physically.
 - d. Producer/Receipt shippers with production that enters the NGTL system that is delivered upstream of an extraction facility may lose the benefit of NGL extraction.

- e. Double Dipping: Producer/Receipt shippers who extract (NGLs) in the field who also hold export delivery service obtain value for NGL in the common stream.
 - f. Producer/Receipt shippers who do not hold export delivery service cannot obtain direct access to the NGLs in the gas stream once the gas enters the NGTL system.
 - g. Producers who do not hold export delivery service and therefore do not share in value of NGL in the common stream are non-the-less responsible for NGL royalty payments.
4. Clarification of public interest criteria related to "sidestreaming"¹ and "co-streaming"² projects with respect to matters such as overall energy efficiency, impact of facilities proliferation, NGL entitlement, equity (fairness) and optimization of resource value.
 5. Potential dilution of the common stream energy content as a result of the increasing importance of Coal Bed Methane (CBM) and potential solutions including alternative lean gas facilities design criteria.
 6. Consideration of Issues related to NGL extraction from gas sourced from outside of Alberta that is transported on EUB regulated pipelines, including understanding positions of:
 - a. Ex-Alberta producers, shippers, governments, connecting pipelines, and capital markets; and
 - b. Alberta producers, shippers, pipelines, extraction industry, petrochemical industry and government
 7. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, including financial impact to gas and NGL market participants, and impacts to existing contracting practices, NIT transactions, storage arrangements, ex-Alberta (upstream and downstream) implications and NGTL rate implications.
 - a. Status Quo
 - b. Equalization
 - c. Single Value Bucket
 - d. Receipt Contracting
 - e. Producer Directed
 - f. Regulated Business
 - g. Other
 8. Entitlement to NGL Value on ATCO Pipelines system

¹ The Board has refined the definition of "Sidestreaming" that was referred to in the Preliminary List of Issues. "Sidestreaming" refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream upstream of existing straddle plant facilities thereby reducing the NGL content of the gas (richness of the gas) that would otherwise have been available for processing at the downstream straddle plant facilities.

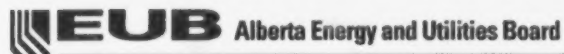
² Co-streaming refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream downstream of existing straddle plant facilities thereby reducing the volume of gas that would otherwise have been available for processing at those straddle plant facilities.

- a. Review of existing practices, any perceived inequities and opportunities for NGL extraction
 - b. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, as they may apply
 - c. Consideration of pipeline interconnection issues
 - d. Tariff and rate implications of changes
9. Entitlement to NGL Value on AUI's system
 - a. Review of existing practices, any perceived inequities and opportunities for NGL extraction
 - b. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, as they may apply
 - c. Consideration of pipeline interconnection issues
 - d. Rate implications of changes
10. Is it desirable to implement NGL component tracking gas on transmission pipelines?
Exploration of potential means and methodologies to be used to implement component measurement and tracking?
11. Consideration of NGL Extraction Conventions with respect to EUB regulated facilities on non EUB regulated pipelines including the form of licenses, permits or approvals.

Attachment 4

**EUB INQUIRY INTO NGL EXTRACTION MATTERS
Procedural Schedule**

Step	Tentative Date(s) (2007)	Revised Date(s) (2007 unless specified)
Inquiry Notice and Scope Submission Request	June 1	June 4
Scope Submissions Due	June 15	June 15
Inquiry Scope Finalized	July 6	July 6
Parties Submissions (simultaneous)	July 23	August 28
Information Requests to Parties	August 7	September 18
Information Responses	August 20	October 9
Rebuttal Submissions	September 10	October 23
Inquiry Expert Submission	September 24	November 6
Information Requests to Inquiry Expert	October 2	November 20
Information Responses	October 9	December 4
Rebuttal to Inquiry Expert Evidence	October 23	December 18
Inquiry	November 5-30 (as required)	January 29 - February 29, 2008
Argument		To be determined
Reply Argument		To be determined



Calgary Office 640 - 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

August 15, 2008

To: Interested Parties

APPLICATION NO. 1513726
INQUIRY INTO NGL EXTRACTION MATTERS (INQUIRY)
RULING REGARDING MOTION AND NOTICE OF QUESTION OF
CONSTITUTIONAL LAW

On June 27, 2008, BP Canada Energy Company, Inter Pipeline Fund, Provident Energy Ltd., ATCO Midstream Ltd. and Spectra Energy Empress L.P. (the Applicants) filed a Motion and Notice of Question of Constitutional Law (Motion) with the Alberta Energy and Utilities Board (EUB or Board). The Motion was filed pursuant to section 12 of the *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3 (APJA) and sections 9 and 23.1 of the *Alberta Energy and Utilities Board Rules of Practice*, AR 101/2001.

The Motion requested:

...a determination that issues respecting NOVA Gas Transmission Limited's ("NGTL") tariffs, tolls, operations and practices, including any proposed change in contracting convention for natural gas liquids ("NGLs") extraction rights in the common stream on the NGTL system, are *ultra vires* the Board, as the NGTL system is an interprovincial undertaking. Accordingly, the Board is without jurisdiction to consider these issues in Application No. 1513726 (the "NGL Inquiry").

The Motion requested the following relief:

- a) An interim order staying or adjourning the within Inquiry until determination by this Board, the National Energy Board or a Court of competent jurisdiction of the question of whether NGTL's Alberta System is subject to exclusive federal jurisdiction as part of an interprovincial undertaking;
- b) An Order dismissing consideration of all issues concerning tariffs, tolls, operations and practices, including any proposed change in contracting convention for NGL extraction rights in respect of the common stream on the NGTL system;
- c) Alternatively, an Order staying consideration of all issues concerning tariffs, tolls, operations and practices including any proposed change in contracting convention for NGL extraction rights in respect of the common stream on the NGTL system pending the determination of Phase I of an Application before the National Energy Board for a Certificate of Public Convenience and Necessity and related Approvals for the TransCanada Alberta System dated June 17, 2008;

- d) In the further alternative, an Order referring the Question of Constitutional Law in the form of a special case to the Court of Queen's Bench of Alberta, pursuant to s. 13(1)(b) of the *Administrative Procedures and Jurisdiction Act*.

In a letter of July 2, 2008, the Board acknowledged receipt of the Motion and established a written process indicating that it would issue its ruling on the Motion following review of submissions from interested parties and the Applicants' reply.

A submission in favor of the Motion was received from the Western Export Group and Tenaska (WEG/Tenaska) on July 28, 2008.

Submissions opposed to the Motion were received from EnCana Corporation (EnCana); NOVA Gas Transmission Ltd. (NGTL); the Canadian Association of Petroleum Producers (CAPP); Shell Canada Energy, Shell Energy North America (Canada) Inc., Shell Canada Products, and Shell Chemicals Canada Ltd. (Shell); Alberta Department of Energy (ADOE); Imperial Oil Resources and ExxonMobil Canada Energy (Imperial/EMC); ConocoPhillips Canada (ConocoPhillips); NOVA Chemicals Corporation (NOVA Chemicals) and Taylor NGL Partnership Limited (Taylor) on July 28, 2008. (These parties are hereinafter referred to as the "Opposing Respondents").

A Reply Submission from the Applicants was received on August 7, 2008 (Applicants' Reply Submission).

Background

On June 4, 2007 the Board issued a Notice¹ which initiated the present inquiry into matters related to the extraction of natural gas liquids (NGL or NGLs). A Final Scoping Document² incorporated comments from interested parties and was issued by the Board on July 6, 2007. Evidence was filed by interested parties commencing in August, 2007, including evidence from the independent Inquiry Expert retained by the Board. Information Requests and Responses were filed by interested parties and the Inquiry Expert. The oral hearing portion of the Inquiry took place in two stages; the first addressed issues in the Inquiry Expert's evidence and occurred from February 5 to 12, 2008. The second phase of the oral hearing portion of the Inquiry took place from May 27 to July 18, 2008. In total 32 days were required to complete the oral portion of the Inquiry.

On June 17, 2008, during the second phase of the oral portion of the Inquiry, TransCanada PipeLines Limited (TransCanada) filed an application (NEB Application)³ with the National Energy Board (NEB) to bring the TransCanada Alberta System (NGTL System) owned by its wholly-owned subsidiary, NGTL, under the jurisdiction of the federal regulator. In the NEB Application, TransCanada applied for a certificate of public convenience and necessity (CPCN) with respect to the NGTL System and proposed that the application be considered in two phases. Phase I would consider the constitutional question of whether the NGTL System is now properly within federal jurisdiction and subject to regulation by the NEB. TransCanada requested that the NEB issue a declaratory order confirming NEB jurisdiction. Phase II would consider whether the NGTL System is required by the present and future public convenience and necessity and the

¹ Notice, Exhibit 001-01, is attached as Appendix 1

² Final Scoping Document, Exhibit 001-08, is attached as Appendix 2

³ Exhibit 053-58

request to issue a CPCN. Phase II would only proceed if the NEB determined the NGTL System to be within federal jurisdiction in Phase I. TransCanada requested that any jurisdictional declaratory order would be made effective upon the issuance of the CPCN.

At the request of certain of the participants, the Board set aside June 20, 2008 for oral argument on the impact on the Inquiry of the filing of the NEB Application. On June 21, 2008, the Board issued a procedural ruling (June Ruling)⁴ regarding the impact on the Inquiry of the NEB Application. In the June Ruling the Board determined:

The Board finds that it continues to have jurisdiction with respect to the NGTL System until such time as a competent authority determines otherwise. No authority has been provided to the Board which would suggest that the Board has lost its jurisdiction merely as a result of the filing of the Application, or based on the assertion of TransCanada in the Application that the NGTL System is by law properly within Canadian federal jurisdiction. To the contrary, the Board agrees with those parties that suggested that the Board and its successor tribunal, the Alberta Utilities Commission, have a statutory obligation to regulate NGTL and to do so in the Alberta public interest.

The Board agrees with parties that submitted that jurisdiction is a matter of law and until such time as a competent authority determines, as a matter of law, that jurisdiction over the NGTL System is properly vested in another tribunal, the Board will not abdicate its responsibilities by failing to carry out its statutory mandate to regulate the NGTL System.

Submissions in Favor of the Motion

The Applicants, supported by WEG/Tenaska, argued that the Board lacks the jurisdiction to proceed with the Inquiry insofar as it may relate to the tariffs, tolls, operations and practices, including any proposed change in convention for extraction rights to the NGLs entrained within the common stream on the NGTL System, as the NGTL System is an interprovincial undertaking. Among various submissions in support of the Motion, the Applicants submitted that the Board has an obligation to consider its jurisdiction with respect to these matters before continuing with the Inquiry process, a process that will involve a determination that the NGTL System is now a work or undertaking within federal jurisdiction. The Applicants further submitted that the Inquiry is in pith and substance dealing with matters properly under federal jurisdiction.⁵

The Applicants referred to the June Ruling which determined that the Board retains jurisdiction over the NGTL System until a contrary finding is made by a competent authority. The Applicants submitted that the Board is a competent authority under the APJA.⁶ Accordingly, the Board is able to make the determination that the NGTL System meets the criteria set out in *Westcoast Energy Inc. v. Canada*, [1998] 1 S.C.R. 322 at paragraph 65, and is thereby subject to exclusive federal jurisdiction pursuant to the effect of sections 91(29) and 92(10)(a) of the *Constitution Act, 1867*.⁷

⁴ June Ruling, Exhibit 053-63, is attached as Appendix 3

⁵ Applicants' Reply Submission, paragraph 43

⁶ Applicants' Reply Submission, paragraphs 7 and 71

⁷ Motion, paragraph 47, Applicants' Reply Submission, paragraphs 14 and 59

The Applicants further enumerated a number of “features” starting at paragraph 59 of the Motion in support of a request for a stay of all issues concerning tariffs, tolls, operations and practices on the NGTL System pending the determination of Phase I of the NEB Application.

Submissions Opposed to the Motion

Set out below are certain of the key submissions of the Opposing Respondents as well as the Reply comments by the Applicants.

Motion Is out of Time

NGTL suggested that the Motion was not properly before the Board for failure to meet the requirement of subsection 12(1)(a) of the APJA to provide notice “at least 14 days prior to the date of the proceeding”. Noting that the Notice was issued on June 4, 2007 and the oral hearing began on February 5, 2008, NGTL submitted that the Motion was out of time.⁸

The Applicants responded by suggesting that NGTL’s interpretation of the notice requirement was overly technical and that it should be interpreted as applying to the hearing of the Motion. The Applicants suggested that the legislative requirement was intended to ensure sufficient notice to the Attorney Generals for Alberta and Canada, neither of whom has complained of insufficient notice.

Is the Board Able to Make a Jurisdictional Determination with Respect to the NGTL System?

Most of the Opposing Respondents and the Applicants did not take issue with the proposition that the Board was a competent authority able to make a determination with respect to its continued jurisdiction over the NGTL System and to address a constitutional question. Reliance was placed on the APJA and the *Designation of Constitutional Decision Makers Regulation* AR 69/2006. Counsel for CAPP suggested that the “special situation” of NGTL forms an exception to the general powers of the Board in deciding constitutional questions.⁹

Insufficient Evidence

Certain Opposing Respondents submitted that there was insufficient evidence supplied with the Motion to permit the Board to undertake an examination of the jurisdiction over the NGTL System and therefore the Motion should be dismissed.

The Applicants and WEG/Tenaska responded by noting that an NGTL witness confirmed the facts and circumstances contained in the NEB Application in sworn evidence before the Board.¹⁰ Further, if the Board considers that there is insufficient evidence to determine a jurisdictional question, it is open to the Board to take steps to gather and test the evidence it may require.¹¹ Moreover, it is not open to the Board to avoid an examination of its jurisdiction. The Applicants referred¹² to the Alberta Court of Appeal decision in *ATCO Gas and Pipelines Limited v. Alberta (Energy and Utilities Board)*,¹³ wherein the Court vacated a portion of the Board’s decision on the basis that it had failed to determine if certain assets were “non utility” and to address the question of its jurisdiction in respect of such assets.

⁸ July 28, 2008 Submission of NGTL, paragraph 23

⁹ July 28, 2008 Submission of CAPP, pages 2-3

¹⁰ Applicants’ Reply Submission, paragraph 82; July 28, 2008 Submission of WEG/Tenaska, page 2

¹¹ Applicants’ Reply Submission, paragraph 86

¹² Applicants’ Reply Submission, paragraph 9

¹³ *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2004 ABCA 3
EUB Decision 2009-009 (February 4, 2009)

Stay

Certain Opposing Respondents submitted that the Applicants have failed to meet the requirements of an interlocutory stay application as described in a series of authorities including decisions of the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 (*Metropolitan Stores*) and *R.J.R. MacDonald Inc. v. Canada (A.G.)* (1994), 111 D.L.R. (4th) 385 (S.C.C.), (*R.J.R. MacDonald*).¹⁴ The Applicants submitted in reply that the tripartite test for a stay of proceedings is not the proper test to be applied in the present circumstances. A stay of the Inquiry process should be granted on the basis of the principles of comity and *forum non conveniens* in favor of the NEB process presently considering the NEB Application.

De facto Doctrine

Imperial/EMC and Shell submitted that the Board could proceed without dealing with the jurisdictional issues and that the *de facto* and/or necessity doctrines are principles that have been applied in situations where a finding of unconstitutionality has been made. Reliance was placed on the *Reference Re: Manitoba Language Rights*, [1985] 1 S.C.R. decision.¹⁵ The Applicants submitted in reply that the *de facto* doctrine is intended only to protect justified expectations of those parties that have relied upon the acts of those administering invalid laws.¹⁶

Reference to Alberta Court of Queen's Bench

NGTL submitted that the legal principle of comity should apply such that the Board should exercise forbearance in addressing the question of jurisdiction over the NGTL System in favor of the NEB which already is in the process of considering the appropriate regulatory jurisdiction.¹⁷ NGTL argued that the principle of comity suggests that qualified decision makers with concurrent jurisdiction over a particular matter should allow the decision to be addressed in the forum where it was first raised, thereby avoiding duplicative proceedings and potentially conflicting outcomes. In support of its position, NGTL referred to the *Cyanamid Reference Case*.¹⁸ In this decision the Ontario Court of Appeal deferred to the Federal Court of Appeal on a matter of jurisdiction over a proposed by-pass pipeline on the principle of comity declaring that "in the absence of special circumstances, priority should be given to the proceedings first commenced".¹⁹

Other Opposing Respondents, including the ADOE²⁰ and Imperial/EMC²¹ supported the application of the principle of comity, regulatory forbearance or *forum conveniens*²² in rejecting the Applicants' request to refer the question of jurisdiction over the NGTL System to the Alberta Court of Queen's Bench. Some of these Opposing Respondents submitted that the application of these principles would direct the Board to defer the issue of regulatory jurisdiction to the NEB, rather than undertaking a jurisdictional process itself.

¹⁴ July 28, 2008 Submission of NGTL, paragraphs 73-79

¹⁵ July 28, 2008 Submission of Imperial/EMC, paragraph 9. July 28, 2008 Submission of Shell, page 5

¹⁶ Applicants' Reply Submission, paragraph 54

¹⁷ July 28, 2008 Submission of NGTL, paragraph 85

¹⁸ *Reference re Legislative Authority over Bypass Pipelines*, (1988) 49 D.L.R. (4th) 566 (Ontario Court of Appeal), (*Cyanamid Reference Case*)

¹⁹ *Cyanamid Reference Case*, page 574

²⁰ July 28, 2008 Submission of ADOE, paragraph 24

²¹ July 28, 2008 Submission of Imperial/EMC, paragraph 5

²² July 18, 2008 Submission of ADOE, paragraph 28

The Applicants submitted in their Reply Submission that, should the Board accept the position of the Opposing Respondents and apply the principle of comity to the consideration of the appropriate regulatory jurisdiction over the NGTL System, then the entirety of the Inquiry should be deferred until the NEB's decision on the jurisdictional question is issued.²³

Recommendations vs. Decisions and Directions

Some Opposing Respondents have considered the appropriateness of the Board making recommendations, as opposed to directions or decisions as a result of the Inquiry.

While it appears that the Opposing Respondents considered that the Board had the ability to carry out all aspects of the initial scoping documents, including the issuance of decisions and directions if considered appropriate, NGTL submitted that the result of the Inquiry should be recommendations by the Board, not directions or decisions.²⁴

Inquiries May Consider Matters Incidental to Matters under Federal Jurisdiction

Some Opposing Respondents have considered the appropriateness of the Board making recommendations that may relate to the NGTL System, even if it were federally regulated in the future.

NGTL referred to *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3 and the ability of one level of government to enact laws which may "affect" but do not "impair" the core constitutional competence of another level of government. NGTL submitted that because recommendations by the Board under its governing legislation cannot be imposed upon the NEB, there are no restrictions on the ability of the Board to issue recommendations that may "affect" NGTL or pipelines that are presently federally regulated.²⁵ NGTL submitted:

Even if the TransCanada Alberta System were federally regulated, the Board in this Inquiry would have jurisdiction to make recommendations concerning changes to the contracting convention, including the implementation of the NEXT Model. Such recommendations would not serve to "impair" or interfere with the regulation of the interprovincial transportation aspects of the TransCanada Alberta System by the NEB.²⁶

In its submission, Imperial/EMC argued that the Board has full jurisdiction to complete the NGL Inquiry, and in the alternative, it has the ability to make recommendations without regard to a future determination of the jurisdiction over NGTL. Imperial/EMC submitted:

If it is finally determined that NGTL is within the jurisdiction of the NEB, Imperial/EMC submit that the AEUB has the ability to issue recommendations in the NGL Inquiry even though they may have an incidental effect on NGTL. The Courts have recognized that provinces are able to create inquiries into those matters listed under Section 92 of the Constitution Act, 1867, even if the inquiry has an incidental effect on a federal matter.²⁷

In support of this position, Imperial/EMC referred to *Mercier v. Alberta (Attorney General)*, 183 A.R. 177 (A.B.Q.B.), aff'd [1977] 200 A.R. 41 (A.B.C.A.) leave to appeal refused, [1977] S.C.C.A. No. 333 (*Mercier Decision*).

²³ Applicants' Reply Submission, paragraph 45

²⁴ July 28, 2008 Submission of NGTL, paragraph 36

²⁵ July 28, 2008 Submission of NGTL, paragraphs 37-38

²⁶ July 28, 2008 Submission of NGTL, paragraph 37

²⁷ July 28, 2008 Submission of Imperial/EMC, paragraph 18

The Applicants refuted submissions by the Opposing Respondents which asserted that provincial inquiries may be conducted on matters which touch on matters of federal jurisdiction. In support of their position, the Applicants referred to a decision by the Supreme Court of Canada in *Starr v. Houlden*, [1990] 1 S.C.R. 1366 (S.C.C.) (*Starr Decision*). That decision stands for the proposition that an inquiry conducted under provincial legislation may incidentally touch on matters of federal jurisdiction but where the inquiry is predominantly concerned with a matter which is in "pith and substance" a federal matter, provincial jurisdiction is exceeded. The Applicants submitted that the Inquiry "has developed such that the predominant focus has clearly become the appropriate NGL extraction convention and the Alberta System tariff as they affect the reprocessing of the NGTL common stream".²⁸

Ruling

The writer has been authorized by the Board to convey the within Ruling.

The Motion is dismissed. The Applicants have failed to establish to the satisfaction of the Board a sufficient basis for granting any of the requested forms of relief. Details of the Ruling are provided below and are organized by issue.

Motion Is out of Time

With respect to the suggestion that the Motion is out of time, the Board agrees with the Applicants that in the circumstances of the present proceeding it would appear that the objectives of subsection 12(1)(a) of the APJA have been satisfied. These objectives appear to be to provide sufficient time for the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta to review the question of constitutional law and to evaluate the need for participation. The filing of the NEB Application is a material event which supports the filing of the Motion at the stage in the Inquiry in which it was filed.

Is the Board Able to Make a Jurisdictional Determination with Respect to the NGTL System?

The Board agrees that it is a competent authority able to make a determination with respect to constitutional questions in the correct circumstances pursuant to the APJA and the *Designation of Constitutional Decision Makers Regulation*. However, for the reasons stated below, the Board finds it to be unnecessary to make a determination as to whether the present circumstances warrant a determination of jurisdiction over the NGTL System.

Insufficient Evidence

For the reasons stated below, the Board finds it to be unnecessary to make a determination on the sufficiency of the evidence before it with respect to determining jurisdiction over the NGTL System.

Stay

The Board agrees with the Opposing Respondents that the tripartite test described in the *Metropolitan Stores* and *R.J.R. MacDonald* decisions has not been satisfied by the Motion. The test requires a demonstration by the Applicants that a serious question requires determination by the decision maker and that an irreparable harm will result if the stay is not granted. The test further requires an assessment of the balance of convenience to the parties. The Applicants have

²⁸ Applicants' Reply Submission, paragraph 25

failed to establish to the satisfaction of the Board any of the three requirements necessary to grant a stay of matters before the Inquiry.

The “features” supporting a stay enumerated by the Applicants starting at paragraph 59 of the Motion do not establish the likelihood of irreparable harm if the Board continues to proceed to issue recommendations with respect to matters dealt with in the Inquiry. The Board continues to consider that the balance of convenience favors a continuation of the Inquiry process. As stated at page 3 in the June Ruling:

The Board has also considered that the Inquiry, in part, is dealing with a matter that has been at issue for at least a decade and several parties stated or implied that further delay would result in prejudice to them.

The Board agrees with those parties that submit the Board must deal with the facts as they exist today, and must carry out its public interest responsibilities as they exist today. The granting of the relief requested by TransCanada is uncertain. Further, a great deal of uncertainty was expressed by parties in relation to the timing of any approval. It is also unclear if references or appeals to the Courts would be required before matters are finally resolved. In light of these uncertainties, the Board considers it not only appropriate, but necessary in the public interest, to continue with the Inquiry process. ...

The Board considers it to be in the public interest to complete the Inquiry and to render a report, utilizing the substantial evidentiary record before it, a record which was accumulated with broad stakeholder participation and an independent Inquiry Expert. The Inquiry is a unique opportunity to consider, in a comprehensive fashion, various NGL and resource related issues directly relevant to the public interest. Further, it represents the culmination of a process reflecting issues and concerns that have been outstanding since before the 1996 Gulf Strachan Decision (Decision D96-07).

De facto Doctrine

For the reasons stated below, the Board finds it to be unnecessary to make a determination with respect to the applicability of the *de facto* doctrine.

Reference to Alberta Court of Queen's Bench

The Board considers that the effect of a reference to the Court of Queen's Bench would, in the circumstances, be the equivalent of granting a stay of the Inquiry proceeding. For the reasons referred to above with respect to the denial of a stay, and for the reasons stated below, the Board declines to refer a constitutional question to the Alberta Court of Queen's Bench.

For the same reasons the Board is not required to review the applicability of the principles of comity or forum non conveniens. The Board observes however, that the NEB Application was filed with the NEB prior to the Motion being filed in the Inquiry.

The Board also notes the NEB's letter dated July 18, 2008 which accompanied Hearing Order GH-5-2008 in respect of the NEB Application.²⁹ The NEB letter states that the NEB “is of the opinion that dealing with the application expeditiously would be in the public interest” and that “based on the information available at this time, it is expected that decisions on the application will be issued by early in the first quarter of 2009”. The NEB Hearing Order demonstrates that the NEB process is fully engaged, that it will be expeditious and that a result is anticipated within

²⁹ The Hearing Order is referred to in paragraph 72 of the Applicants' Reply Submission.

a reasonable time frame. These observations reassure the Board of the appropriateness of its decision that an examination of the jurisdictional status of the NGTL System is neither required nor warranted in the circumstances. The Board also notes, from a practical perspective, that should the NEB be permitted to carry out its processes as planned without an intervening decision on jurisdiction by a competent authority the concerns raised by some parties would be alleviated with respect to the creation of a possible regulatory gap with respect to the NGTL System.

Recommendations vs. Decisions and Directions

The Board has noted the submissions by certain parties with respect to the original range of possible outcomes and objectives for the Inquiry, which included potential decisions or directions to parties with respect to pipeline tariff amendments. Another possible outcome was possible recommendations to the Government of Alberta on matters touched on by the Inquiry.

The possibility that the Board could issue decisions or directions relating to NGTL or the NGTL System appears to be generating much of the concern with respect to the Board's jurisdiction to continue with the Inquiry.

Although the division of the Board into two tribunals, the Energy Resources Conservation Board (ERCB) and the Alberta Utilities Commission (AUC), had been proposed at the time that the Inquiry commenced, the ultimate passage of legislation, the form that legislation might take and the timing of enactment were uncertain. The creation of the ERCB and the AUC as of January 1, 2008 clearly demonstrates the intention of the legislature to phase out any ongoing role for the Board. Accordingly, further proceedings or processes, including compliance filings that could result from directions of this Board would fall to these successor tribunals to consider. Although the Board remains able to issue decisions and directions as originally contemplated, from a practical perspective, the Board considers such measures in the circumstances to be inadvisable. Making recommendations to the applicable authority appears to be the most appropriate method of proceeding. Consequently the Board has determined that it will make recommendations only with respect to the matters dealt with in the Inquiry, rather than issue specific decisions or directions in relation to any such matters.

As noted in the following section, the Board considers that it has the ability in the Inquiry to address matters by way of recommendation that may have an incidental effect on matters under federal regulation. Given that the Board will not be issuing specific decisions or directions to particular parties as a result of the Inquiry and will only be issuing recommendations that may have an incidental effect, if any, on matters under federal regulation, the Board considers questions with respect to the jurisdiction over the NGTL System to be irrelevant. Accordingly, the Board sees no need to reexamine the June Ruling or to further consider the issue of jurisdiction with respect to NGTL or the NGTL System.

Inquiries May Consider Matters Incidental to Matters under Federal Jurisdiction

Parties have considered the ability of the Board to make recommendations that may relate to the NGTL System given the position of the Applicants that the NGTL System should be subject to federal regulation.

A review of the Notice dated June 4, 2007 initiating the Inquiry and of the Final Scoping Document attached to the Board's letter of July 6, 2007 confirms that the Board intended to pursue public interest matters related to NGL extraction that have been outstanding for many

years dating back prior to the 1996 *Gulf Strachan* decision.³⁰ The Inquiry was commenced under broad inquiry powers under several statutes and was stated to be for the purpose of examining issues related to NGL extraction from the perspective of providing for the economic, orderly and efficient development of Alberta's natural resources in the public interest. The Board indicated that:

...it intends to maintain a broad scope for the Inquiry so that the full range of complex and interrelated issues relating to resource development and NGL extraction can be examined and understood.³¹

The Board's jurisdiction to inquire into matters related to providing for the economic, orderly and efficient development of Alberta's oil and gas resources in the public interest³² has not been challenged by the Motion. Similarly, no parties challenged the scope of the Inquiry on jurisdictional grounds when it was first initiated. The Board agrees with Imperial/EMC when it stated:

...Imperial/EMC submit that the AEUB has full jurisdiction to complete the NGL Inquiry, regardless of the final determination of the jurisdiction of NGTL. The NGL Inquiry was called by the AEUB pursuant to its powers under Section 21 of the *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10 and Section 46, as it then was, of the *Public Utilities Board Act*, R.S.A. 2000, c. P-45. The subject of the NGL Inquiry is natural gas liquids which are an important resource in the province of Alberta and which the AEUB and its successor are mandated to conserve. According to the scoping document issued by the AEUB at the beginning of the NGL Inquiry, "[t]he inquiry will examine issues related to NGL extraction from the perspective of maximizing economic, orderly and efficient development of Alberta's natural resources in the public interest". The issues listed in the scoping document are broad and deal with many facets of the Alberta public interest. Furthermore, a wide variety of industry participants have taken part in the NGL Inquiry, some of which are not regulated, some of which are regulated by the AEUB and some of which are regulated by the NEB. NGTL is but one party in the NGL Inquiry. The application of one participant to be regulated by the NEB does not change the AEUB's jurisdiction over the broad matters of Alberta public interest covered by the NGL Inquiry.³³

The Board disagrees with the Applicants when they submitted that the Inquiry would not be able to consider matters that could relate to the NGTL System on the basis that the Inquiry "has developed such that the predominant focus has clearly become the appropriate NGL extraction convention and the Alberta System tariff as they affect the reprocessing of the NGTL common stream".³⁴ Rather, it is the Board's stated intention to consider NGL extraction issues from the perspective of providing for the economic, orderly and efficient development of Alberta's natural resources in the public interest that forms the dominate purpose of the Inquiry and which demonstrates that the "pith and substance" of the Inquiry is "firmly anchored to a provincial head of power".³⁵ To the extent any recommendations made by the Board as a result of the Inquiry

³⁰ Decision D 96-07, *Gulf Canada Resources Limited, Strachan Gas Plant Approval Amendment, NGTL Gas Sidestreaming Application*, dated September 26, 1996, Exhibit 001-08-03

³¹ Board letter of July 6, 2007, page 2

³² *Oil and Gas Conservation Act*, R.S.A. 2000, c. 0-6, Sections 4, 7 and 94; *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, Sections 2, 3, 20 and 21

³³ July 28, 2008 Submission of Imperial/EMC, paragraph 17

³⁴ Applicants' Reply Submission, paragraph 25

³⁵ *Starr Decision*, page 1401

may have any impact on matters under federal regulation, any such impact would be incidental, a consequence which has been "consistently upheld" by the Supreme Court of Canada.³⁶

The Board agrees with the following submissions of Imperial/EMC in respect of the implications of the *Mercier Decision*:

Imperial/EMC submit that the purpose of the NGL Inquiry is to "examine issues related to NGL extraction from the perspective of maximizing economic, orderly and efficient development of Alberta's natural resources in the public interest." Similar to the inquiry in *Mercier*, the dominant purpose of the NGL Inquiry is a matter which is under provincial jurisdiction, namely the management of the province's natural resources. As a result, regardless of whether NGTL is under federal jurisdiction, the AEUB has the right to investigate and make recommendations regarding the extraction of NGLs and the NGL convention in the Province of Alberta even if such decisions may have an incidental effect on NGTL.³⁷

The Board considers that its clear jurisdiction with respect to providing for the economic, orderly and efficient development of Alberta's natural resources and the interests of those that depend on those resources in the public interest is a sufficient basis for the Board to continue with the Inquiry which will result in the Board, in due course, considering possible recommendations relating to the matters dealt with in the Inquiry.

Conclusion

For the reasons stated above the Motion is dismissed.

Next Steps

The Board will shortly issue a draft outline for written Argument and Reply Argument. Argument must be filed by noon, September 5, 2008. Reply Argument must be filed by noon, September 26, 2008.

Yours truly,

(sent by email)

Brian C. McNulty
Board Counsel

³⁶ *Starr Decision*, pages 1390-1391

³⁷ July 28, 2008 Submission of Imperial/EMC, paragraph 19

Appendix 1
Inquiry Notice



Notice

Appendix 2
July 6, 2007 Final Scoping Letter



Final Scoping Letter
July 6 2007

Appendix 3
June 21, 2008 Procedural Ruling



Procedural Ruling
June 21 2008



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Notice

NOTICE OF BOARD INITIATED PROCEEDING APPLICATION NO. 1513726 INQUIRY INTO NGL EXTRACTION MATTERS

WHEREAS:

- (a) the Alberta Ethane Policy¹ will expire on June 30, 2008;
- (b) there has been significant evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and the related gas, transportation and natural gas liquids (NGL) markets since the implementation of the Alberta Ethane Policy in July 1990;
- (c) in Decision 2004-006² the Board requested parties to work with NOVA Gas Transmission Ltd. (NGTL) to review the current conventions and practices for extraction for NGLs off the NGTL system which resulted in the *NGL Extraction Convention Task Force Report* dated September 2005 (the Task Force Report); and
- (d) the Board in a letter dated July 24, 2006 reluctantly accepted the Task Force Report despite concerns that many of the key issues and perceived inequities relating to extraction remained unresolved and indicated that it would consider further processes to address these issues,

Take Notice that The Alberta Energy and Utilities Board (EUB or Board) pursuant to Section 21 of the *Energy Resources Conservation Act* RSA 2000, c. E-10, Section 94 of the *Oil and Gas Conservation Act* RSA 2000, c. O-6 and Section 46(1) of the *Public Utilities Board Act* RSA 2000, c. P-45 will hold an inquiry into matters related to NGL extraction from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (the Inquiry).

The Inquiry will examine issues related to NGL extraction from the perspective of maximizing the economic, orderly and efficient development of Alberta's natural resources in the public interest. The issues that the Inquiry will examine include, without limitation:

- existing extraction conventions
- potential dilution of the common stream energy content by lean gas associated with Coal Bed Methane (CBM)
- growing intra-Alberta consumption demand for natural gas
- potential for northern gas; and
- Alberta regulated Straddle facilities on NEB regulated pipelines.

¹ As reflected in IL 90-09 dated July 16, 1990, Section 35 of the *Oil and Gas Conservation Act* RSA 2000, c. O-6 and Part 9.1 of the *Oil and Gas Conservation Regulations* AR 151/71

² Decision 2004-006 – Solex Gas Processing Corp. Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines, dated January 27, 2004.

Purpose of the Inquiry

The evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and the related gas, transportation and NGL markets since the implementation of the Alberta Ethane Policy in July 1990 (set to expire June 30, 2008) have convinced the Board that there is a need for a timely and comprehensive re-examination of historical conventions and practices with respect to the extraction of NGLs on EUB regulated pipelines and facilities. The need for such a review is made further apparent in light of anticipated future developments including the use of EUB regulated pipelines to transport increased amounts of gas sourced outside of Alberta, development of sources of CBM and the growing market for gas within the Province. This Inquiry will consider these conventions and practices to determine if changes are required in the public interest.

Particulars of the Inquiry

A Preliminary Scoping Document and a Preliminary List of Issues to be addressed by the Inquiry and a Tentative Procedural Schedule have been documented and are available for review on the Board's website through IAR Query by selecting Application No. 1513726. The Board requests that parties express their intent to participate in this Inquiry by submitting their intention to participate and comments on the Preliminary Scoping Document and a Preliminary List of Issues.

Please note that neither the EUB cost claim nor intervener funding process will apply to this matter and that all costs incurred by parties will be of their own account. Despite this, the Board is hopeful that parties representing all affected business areas will participate in this Inquiry including:

- Producing companies
- Midstream companies
- Aggregators
- Straddle plant owners and operators including proponents of EUB regulated facilities on NEB regulated pipelines
- Gas transmission pipeline owners and operators
- Shippers on gas transmission pipelines
- Liquids pipeline operators
- Field plant operators with interests in NGLs
- Alberta based Petrochemical plant owners and operators
- Industry groups including IGCAA, CAPP, SEPAC, Canadian Society for Unconventional Gas
- Propane plus market stakeholders
- Consumer groups
- Alberta Government Ministries including those responsible for energy and industry related matters; and
- The Governments, producers, pipeline operators in British Columbia, the Northwest Territories, Yukon and Alaska to the extent they have interests in the transportation of natural gas through EUB regulated facilities.

To File an Intention to Participate

Any party (Participant) wishing to register their intention to participate and submit comments on the Preliminary Scoping Document and a Preliminary List of Issues should submit a letter (Participation Letter) setting out their interest in the Inquiry and contact information by **June 15, 2007**. Each Participant should include with the Participation Letter any comments it wishes to make on the Preliminary Scoping Document, the Preliminary List of Issues or the Tentative Procedural Schedule. Following submissions, the Board will communicate the Final Scoping Document and a Final List of Issues for the Inquiry. Please submit the Participation Letter and comments on the Preliminary Scoping Document and a Preliminary List of Issues electronically to the Board at EUB.UTL@eub.ca. Notification regarding further scheduling or process will only be provided to registered parties.

Process

The Tentative Process Schedule stipulates the filing of Direct Evidence by Participants on matters identified within the Final List of Issues by July 23, 2007. Participant submissions will be followed by Information Requests and Responses, Rebuttal Evidence and an oral hearing anticipated to be held in November 2007. The Board anticipates engaging the services of an independent consultant whose Report would be filed in the Inquiry. Direct Evidence submissions by Participants should address all matters on the Final List of Issues on which the Participant has a position (supporting or opposing) utilizing, where possible, the format employed in the Preliminary List of Issues.

Parties to this proceeding should comply with the Board's general electronic filing guidelines, which require that all e-mails clearly indicate in the "subject" line, the relevant application number, the date, the nature of the submission and the party making the submission. The Board further requests the cooperation of parties by submitting any documents in either Microsoft Word format or an OCR version of any PDF documents.

If you have any questions regarding this matter, please contact either Kim Eastlick by email at kim.eastlick@eub.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@eub.ca or by telephone at (403) 297-3539.

Issued at Calgary, Alberta on June 4, 2007.

ALBERTA ENERGY AND UTILITIES BOARD
Douglas A. Larder, Q.C., General Counsel



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

July 6, 2007

APPLICATION NO. 1513726 INQUIRY INTO NGL EXTRACTION MATTERS

On June 4, 2007, the Alberta Energy and Utilities Board (the Board or EUB) issued a Notice with respect to an Inquiry into Natural Gas Liquids¹ Extraction Matters (the Inquiry). Attached to the Notice were a Preliminary Scoping Document, a Preliminary List of Issues and a Tentative Procedural Schedule. Interested parties were requested to submit a Participation Letter accompanied by comments on the attachments by June 15, 2007. Participation Letters, with or without comments on the attachments to the notice, were received from parties (Parties), all of whom are listed in Attachment 1.

On June 27, 2007, the Board issued a letter informing Parties of a change to the date for evidentiary submissions and the decision of the Board not to hold a pre-hearing conference.

The purposes of this letter are to respond to the comments from Parties and to finalize the Preliminary Scoping Document and the Preliminary List of Issues, describe the role of the independent expert to be engaged by the Board (the Inquiry Expert) and to revise the Procedural Schedule for the Inquiry.

Scope

Preliminary Scoping Document

Although some Parties questioned the meaning of several of the Board's assumptions and pointed out the Board's recognition of the possible conflict among assumptions, in general, the Preliminary Scoping Document received little comment. Parties also requested clarification on the intended outcomes of the Inquiry.

With respect to the intended outcomes of the Inquiry, the Board addressed these in Section 4 of the Preliminary Scoping Document. For greater clarity, however, the Board anticipates that the outcomes of the Inquiry may include any of the following:

- A description of current or proposed NGL extraction conventions on EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines (NGL Extraction Conventions), current issues and trends in gas supply, composition and NGL recovery;

¹ For the purposes of the Inquiry, "Natural Gas Liquids" or "NGLs" means ethane, propane, butane and pentanes plus derived from natural gas.

- Findings as to entitlement to NGL extraction rights with respect to the common stream of EUB regulated pipelines;
- Direction to parties to implement changes to NGL Extraction Conventions including tariff amendments;
- Guidelines or other criteria to assist industry with respect to the economic, orderly and efficient development of Alberta's natural resources as it may relate to NGL extraction rights and facilities development including matters related to sidestreaming² and co-streaming;³
- The identification of new conditions for new facility licenses, permits or approvals; and
- Potential recommendations to the Government of Alberta on policy matters beyond the mandate of the Board.

In light of the absence of significant comment from Parties, the Board does not believe a change is required to the Preliminary Scoping Document other than with respect to the timing of a Board decision. The Board now anticipates an Inquiry Decision mid-year 2008. Attachment 2 is the Final Scoping Document for the Inquiry.

Preliminary List of Issues

Comments received from Parties on the Preliminary List of Issues fall generally into three principal categories:

- The scope is overly broad and should be focused in two general areas:
 - NGL Extraction Conventions
 - Efficient resource development and gas composition issues
- Consideration of the Ethane Policy should be removed from the scope of the Inquiry; and
- The need to consider the impact to existing contractual arrangements and infrastructure investments from any change to the NGL Extraction Conventions.

The Board intends to maintain a broad scope for the Inquiry so that the full range of complex and interrelated issues relating to resource development and NGL extraction can be examined and understood. However, the Board agrees that the issues identified in the Preliminary List of Issues can be grouped to achieve a clearer focus for the Inquiry. This grouping of issues should assist parties and address the three general areas on which Parties commented.

The focus of the Inquiry is on three interrelated principal issues (the Inquiry Principal Issues), each of which may be stated in terms of a question for the Board to address. Each of the Inquiry Principal Issues requires consideration of several interrelated sub-issues:

² The Board has refined the definition of "Sidestreaming" that was referred to in the Preliminary List of Issues. "Sidestreaming" refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream upstream of existing straddle plant facilities thereby reducing the NGL content of the gas (richness of the gas) that would otherwise have been available for processing at the downstream straddle plant facilities.

³ Co-streaming refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream downstream of existing straddle plant facilities thereby reducing the volume of gas that would otherwise have been available for processing at those straddle plant facilities.

1. Do the existing NGL Extraction Conventions need to be changed in order to address perceived inequities in the existing conventions, thereby promoting the economic, orderly and efficient development of Alberta's natural resources? If they need to be changed, how should they be changed to deal with these inequities?

In addressing this issue the Board must consider:

- (a) What are the NGL Extraction Conventions and how are they documented or otherwise established?
- (b) Who has the legal entitlement to NGL extraction rights from the common stream?
- (c) Are the NGL Extraction Conventions consistent with the legal entitlement to NGL extraction rights?
- (d) What inequities result from application of the NGL Extraction Conventions?
- (e) What options (and the pros and cons of each), including without limitation those considered in the NGL Extraction Convention Task Force (NECTF) Report, are available to address these inequities?
- (f) What are the potential impacts to all stakeholders of suggested changes to the NGL Extraction Conventions?

This question relates in whole or in part to Issues 1, 3, 7, 8, 9, 10 and 11 on the Preliminary List of Issues.

2. In addressing the perceived inequities with the NGL Extraction Conventions, does the Board need to consider if further modifications to these conventions and/or the development of other rules and guidelines are required in the interest of:
 - promoting the economic, orderly and efficient development of Alberta's natural resources; and/or
 - sustaining and developing the natural gas industry, Alberta's pipeline, extraction and petrochemical industries?

If modifications to the NGL Extraction Conventions or new rules and guidelines are required, what should they be?

In addressing this issue the Board must consider:

- (a) What are the relevant forecasts to consider?
- (b) How can the development of Alberta's gas resources, both NGL rich gas and lean gas, be encouraged without creating inequities with respect to NGL extraction rights, impacting efficiencies and the sustainability of the extraction and petrochemical industries or causing undue impact to ratepayers?
- (c) How can the extraction and upgrading of NGLs within the Province of Alberta be encouraged to the maximum extent practical while providing the owners of NGL extraction rights with fair compensation?
- (d) Should sidestreaming, co-streaming, or the ability to by-pass extraction be restricted?

- (e) If the answer to (2d) is "yes", what restrictions are appropriate and what are the rules and criterion to be applied in assessing when a restriction is to be applied and in determining what the nature of the restriction will be?
- (f) Do NGL extraction conventions as they apply to all EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines need to be consistent in order to avoid unfair competitive advantages or unfairness to shippers, pipeline/facility owners or buyers of natural gas or NGLs?
- (g) Are modifications desirable in order to encourage the use of Alberta pipeline and extraction facilities by gas sourced from outside of Alberta?
- (h) What are the potential impacts to all stakeholders of suggested modifications to the NGL Extraction Conventions and from any new rules or guidelines?

This question relates in whole or in part to Issues 1, 2, 4, 5, 6, 8, 9, 10 and 11 on the Preliminary List of Issues.

3. In the event that any changes to the existing NGL Extraction Conventions result from the Inquiry or in the event that the Board provides for the development of new rules or guidelines relating to NGL extraction matters, how should these changes be implemented?

In addressing this question the Board must consider:

- (a) What action is required and by whom in order to implement changes to the NGL Extraction Conventions and/or new rules or guidelines and over what period of time?
- (b) Who should bear any associated costs?
- (c) Do any existing arrangements need to be grandfathered?
- (d) Do these new conventions, rules and guidelines require periodic reconsideration?

In considering the Inquiry Principle Issues the Board will, as requested by many parties, have regard for the impact on existing contracts and existing infrastructure investment.

The Board does not intend to review the new Incremental Ethane Extraction Program policy announced by Alberta Energy on September 29, 2006, nor does it intend to undertake a review of the terms and conditions of the existing Ethane Policy. However, the Board may, in the interest of the economic, orderly and efficient development of Alberta's natural resources, consider matters relevant to the public interest principles behind the Ethane Policy and may direct measures or make recommendations directed at continuing a sustainable extraction and petrochemical industry in the Province.

With the above focus, the Board trusts that the context, relevance and interdependence of the issues outlined in the Preliminary List of Issues have been clarified. This additional focus is sufficient, in the Board's view, to proceed to the submission of evidence by parties without holding a pre-hearing conference and with minimal change to the Preliminary List of Issues. Attachment 3 is the Final List of Issues for the Inquiry.

Parties are invited, but not required, to organize their evidence submissions, information requests and argument by addressing the Inquiry Principal Issues and sub-issues. In following this format, Parties are not restricted to the above list of sub-issues in making their submissions and may

address other sub-issues within the scope of the proceeding. This suggestion is intended to ensure that the respective positions of Parties on the issues before the Inquiry are organized, clearly presented and easily contrasted which should lead to a more efficient process overall.

Role of Inquiry Expert

In preparing the initial scope for the Inquiry it became evident that the assistance of a recognized industry consulting firm with expertise in matters before the Inquiry, independent of all Parties and the Board, would be of assistance when considering the various issues to be examined by the Inquiry. The Board has engaged Ziff Energy Group as the Inquiry Expert. The Inquiry Expert will have the responsibilities outlined below.

1. The Inquiry Expert will consider the submissions from Parties to determine which areas require clarification and to identify any informational gaps in the evidence before the Board. The Inquiry Expert will submit information requests to try and achieve clarification and to fill in information gaps. Where it is unable to obtain missing information from parties it will attempt to provide the necessary information in a report (Report) to be filed with the Inquiry. Missing information to be supplied by the Inquiry Expert will primarily be with respect to providing data and forecasting information as well as completing background information from Alberta and other relevant jurisdictions.
2. The Inquiry Expert will conduct an analysis of the evidence of each Party and where the evidence is in significant conflict, the Inquiry Expert will comment in the Report on the points of conflict and highlight the strengths and weaknesses of the positions of the respective Parties.
3. The Inquiry Expert may also identify and assess in the Report one or more possible alternative approaches (or modifications to proposals put forward by Parties) to the matters before the Inquiry. The Inquiry Expert will advance an alternative approach(s) if it is of the opinion that such an alternative approach(s) would likely align with the overall Alberta public interest to a greater extent than any of the approaches suggested by the Parties. The Report will also assess the benefits, limitations and market impacts of any suggested alternative approach(s).

Dealings between the Board and the Inquiry Expert will be limited to administrative and financial matters. Neither the Board nor Board staff will have contact with the Inquiry Expert or review any drafts of the Report.

The Report will be made available to Parties and the Board at the same time. The Board and Parties will have the opportunity to ask the Inquiry Expert information requests and to cross-examine the Inquiry Expert at the hearing. In addition, Parties will be given the opportunity to file written rebuttal evidence in response to the Report.

The Inquiry Expert will not cross-examine Parties and will not provide final argument in the proceedings.

In its deliberations, the Board will consider the Report, information request responses and testimony of the Inquiry Expert as additional evidence for its consideration bearing in mind the independent nature of that evidence.

Procedural Schedule

In light of the Board's June 27, 2007 letter extending the date for filing of evidentiary submissions the Board has modified the procedural schedule. The Revised Procedural Schedule is provided in Attachment 4. The Board has revised the Procedural Schedule at this time to allow parties sufficient time to plan for critical dates and to arrange for the appearance of witness at the hearing. Given the number of parties to the Inquiry and the need to coordinate the schedules of many witnesses, the Board anticipates that it will be difficult to provide for further extensions to the commencement date of the hearing.

As stated in the Board's June 27, 2007 letter, the Board is optimistic that Parties with like interests will now have the opportunity to work together to present joint submissions and seat joint panels for the oral portion of the Inquiry. This would assist all Parties by improving efficiency of the process.

Inquiry Background Documentation

The Board has added the following materials to the record of this proceeding as background documentation which may be of assistance to Parties in the preparation of their submissions.

ERCB Report D88-D: Alberta Ethane Policy, Report on Implementation (April 1988)

NGL Extraction Convention Task Force (NECTF) Report (September 28, 2005)

Decision D 96-07 Gulf Canada Resources Limited - Strachan Gas Plant Approval Amendment NGTL Gas Sidestreaming Application (September 26, 1996)

Decision 2004-006 Solex Gas Processing Corp. - Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines (January 27, 2004)

Information Letter IL 90-09 Government of Alberta Ethane Policy Implementation Procedures (July 16, 1990)

Board Letter to Interested Parties in Response to NGL NECTF Report (July 24, 2006)

If you have any questions regarding this matter, please contact either Kim Eastlick by email at kim.eastlick@eub.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@eub.ca or by telephone at (403) 297-3539.

Yours truly,

(sent via email)

Heather Gnenz and Kim Eastlick
Application Officers

cc. Interested Parties

Attachments

Attachment 1 – List of Parties

Alberta Department of Energy (ADOE)
Alberta Envirofuels Inc. (AEF)
Alberta Ethane Gathering System, L.P. (AEGS)
Alliance Pipeline Ltd. (Alliance)
AltaGas Ltd. (AltaGas)
AltaGas Utilities Inc. (AUI)
ATCO Midstream Ltd.
ATCO Pipelines (AP)
Aux Sable
BP Canada Energy Company (BP)
Canadian Association of Petroleum Producers (CAPP)
Canadian Chemical Producers' Association (CCPA)
Cargill Limited (Cargill)
ConocoPhillips Canada Limited (ConocoPhillips)
Coral Energy Canada Inc. (Coral)
Devon Canada Corporation (Devon)
Direct Energy Marketing Limited (DEML)
Dow Chemical Canada Inc. (Dow)
EnCana Corporation (EnCana)
Export Users Group (EUG)
FB Energy Canada Corp.
Gaz Métro Limited Partnership (Gaz Métro)
Government of the Northwest Territories (GNWT)
Granite Gas Products Inc.
Husky Energy Marketing Inc. (Husky)
Imperial Oil Resources & ExxonMobil Canada Energy (the Companies)
Industrial Gas Consumers Association of Alberta (IGCAA)
Inter Pipeline Fund (Inter Pipeline)
Keyera Energy Partnership (Keyera)
Kinder Morgan Cochin ULC (Cochin)
Nexen Inc. (Nexen)
NOVA Gas Transmission Ltd. (NGTL)
NOVA Chemicals Corporation (NOVA Chemicals)
Pacific Gas and Electric Company (PG&E)
Pembina Pipeline Corporation (Pembina)
Provident Energy Ltd.
Quicksilver Resources Canada Inc. (QRCI)
Shell Canada Limited (Shell)
Spectra Energy Empress L.P. (Spectra)
State of Alaska
Straddle Plant Group
Talisman Energy Inc. (Talisman)
Tenaska Marketing Canada, a division of TMV Corp. (Tenaska)
Taylor NGL Limited Partnership
Terasen Gas Inc. (TGI)
Utilities Consumer Advocate (UCA)
Union Gas Limited (Union)

Attachment 2
EUB INQUIRY INTO NGL EXTRACTION MATTERS

FINAL SCOPING DOCUMENT

1. Introduction

The Alberta Energy and Utilities Board (EUB or Board) has undertaken to conduct an inquiry into matters related to natural gas liquids (NGL) extraction from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (the Inquiry).

The Inquiry will examine issues related to NGL extraction from the perspective of maximizing the economic, orderly and efficient development of Alberta's natural resources in the public interest. The issues that the Inquiry will examine include, without limitation:

- existing extraction conventions
- potential dilution of the common stream energy content by lean gas associated with Coal Bed Methane (CBM)
- growing intra-Alberta consumption demand for natural gas
- potential for northern gas; and
- Alberta regulated Straddle facilities on NEB regulated pipelines.

2. Purpose of the Inquiry

The evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and related gas, transportation and NGL markets since the implementation of the Alberta Ethane Policy¹ in July 1990 (set to expire June 30, 2008) have convinced the Board that there is a need for a timely and comprehensive reexamination of existing rules, contractual arrangements and practices with respect to the extraction of NGLs from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (NGL Extraction Conventions). The need for such a review is made further apparent in light of anticipated future developments including potential use of EUB regulated pipelines to transport increased amounts of gas sourced outside of Alberta, increasing development of CBM and the growing market for gas within the Province. This Inquiry will consider the NGL Extraction Conventions to determine if changes are required in the public interest.

3. Assumptions

The Board considers that it would be beneficial for parties to understand the general assumptions that the Board has relied upon in scoping the issues for the Inquiry. Accordingly, the Board has listed below the assumptions that it has relied upon in preparing this Final Scoping Document. The Board recognizes that these assumptions can sometimes be in conflict.

- (a) In providing for the economic, orderly and efficient development of Alberta's natural resources it is in the Alberta public interest to encourage to the maximum extent practical, the extraction of NGLs within the Province of Alberta, for use, upgrading or sale within Alberta while providing the NGLs owners with fair compensation.

¹ As reflected in IL 90-09 dated July 16, 1990, Section 35 of the *Oil and Gas Conservation Act* RSA 2000, c. 0-6 and Part 9.1 of the *Oil and Gas Conservation Regulations* AR 151/71

- (b) Clear rules and procedures with respect to NGL ownership and extraction are in the public interest.
- (c) Unless the public interest otherwise requires, producers may extract NGLs from their own production, at the field plant upstream of injection into an EUB regulated pipeline.
- (d) It is in the public interest to minimize proliferation of NGL extraction facilities where proliferation may result in decreased net NGL extraction within Alberta, increased net energy use per unit of NGL extracted within Alberta and/or result in greater land use or environmental impact than is necessary.
- (e) It is in the public interest to optimize the energy efficiency of NGL extraction.
- (f) It is in the public interest to maintain a viable extraction and petrochemical industry in the Province.
- (g) It is in the public interest to maximize efficient use of EUB regulated transmission pipeline infrastructure.
- (h) It is in the public interest to maintain liquid and efficient markets for natural gas.
- (i) NGL Extraction Conventions and the Alberta Ethane Policy have historically worked in the general public interest but require review at this time.
- (j) Presently the owner of the natural gas being transported on EUB regulated pipelines has the right to sell its equivalent energy value of the natural gas from the common stream or to take redelivery at an existing point of delivery of its equivalent energy value of the natural gas from the common stream
- (k) Absent a public interest reason to differentiate among EUB regulated pipelines, Producer/Receipt shipper rights with respect to NGL ownership should be equivalent.

4. Objectives

The Board has established the following objectives for the Inquiry:

- (a) Obtain comprehensive stakeholder participation in the Inquiry.
- (b) Generate an Inquiry Decision in mid year 2008 which will:
 - i. Articulate clear principles relating to NGL extraction aimed at codifying appropriate extraction conventions with specific directions, if required, to EUB regulated pipelines with respect to tariff amendments and other directions to reflect the findings of the Board.
 - ii. Identify new conditions, if any, required when issuing facility licenses, permits or approvals, to reflect the findings of the Board.
 - iii. Identify any future steps that are required in order to complete implementation of Inquiry principles, findings and directions.

5. Preliminary List of Inquiry Issues

See attached Attachment 3.

6. Tentative Procedural Schedule

See attached Attachment 4.

Attachment 3

EUB INQUIRY INTO NGL EXTRACTION MATTERS

FINAL LIST OF ISSUES

1. Overview of NGL Extraction Conventions and Markets in Alberta
 - a. Existing Pipeline and Straddle plant NGL extraction rights, conventions and practices on the following EUB regulated pipelines:
 - i. NGTL
 - ii. ATCO Pipelines
 - iii. AltaGas Utilities Inc. (AUI)
 - b. NGL Extraction Conventions, current and proposed for other EUB regulated facilities on non EUB regulated pipelines (i.e. Aux Sable Canada Ltd. North Sable Extraction Plant - Fort Saskatchewan)
 - c. Alberta NGL short and long term supply forecasts and short and long term Alberta NGL Market forecasts
 - d. Straddle plant capacities and utilization (existing and forecasted)
 - e. NGL field extraction capacities and utilization (existing and forecasted)
 - f. Timing and anticipated NGL content of gas presently sourced and forecasted to be sourced, from outside Alberta to be transported utilizing EUB regulated pipelines.
 - g. Existing and forecast quantity of gas consumed within Alberta, exported from Alberta without NGL extraction, and off-gases from oilsands upgrading
2. In light of the June 30, 2008 expiry of the existing Alberta Ethane Policy, is it necessary, for the economic, orderly and efficient development of Alberta's natural resources, or other public interest reasons to implement measures to ensure a sustainable extraction and petrochemical industry in the Province?
3. Perceived inequities with Present NGL Extraction Conventions on NGTL:
 - a. Producer/Receipt shippers delivering gas with below common stream NGL content into NGTL who also hold export delivery service receive benefit of common stream NGL content.
 - b. Producer/Receipt shippers delivering gas with above common stream NGL content into NGTL who also hold export delivery service only receive benefit of common stream NGL content.
 - c. Producer/Receipt shippers with production that enters the NGTL system downstream of extraction plants who also hold export delivery service obtain value for NGL in the common stream even though their gas cannot be processed physically.
 - d. Producer/Receipt shippers with production that enters the NGTL system that is delivered upstream of an extraction facility may lose the benefit of NGL extraction.

- e. Double Dipping: Producer/Receipt shippers who extract (NGLs) in the field who also hold export delivery service obtain value for NGL in the common stream.
 - f. Producer/Receipt shippers who do not hold export delivery service cannot obtain direct access to the NGLs in the gas stream once the gas enters the NGTL system.
 - g. Producers who do not hold export delivery service and therefore do not share in value of NGL in the common stream are non-the-less responsible for NGL royalty payments.
4. Clarification of public interest criteria related to "sidestreaming"¹ and "co-streaming"² projects with respect to matters such as overall energy efficiency, impact of facilities proliferation, NGL entitlement, equity (fairness) and optimization of resource value.
 5. Potential dilution of the common stream energy content as a result of the increasing importance of Coal Bed Methane (CBM) and potential solutions including alternative lean gas facilities design criteria.
 6. Consideration of Issues related to NGL extraction from gas sourced from outside of Alberta that is transported on EUB regulated pipelines, including understanding positions of:
 - a. Ex-Alberta producers, shippers, governments, connecting pipelines, and capital markets; and
 - b. Alberta producers, shippers, pipelines, extraction industry, petrochemical industry and government
 7. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, including financial impact to gas and NGL market participants, and impacts to existing contracting practices, NIT transactions, storage arrangements, ex-Alberta (upstream and downstream) implications and NGTL rate implications.
 - a. Status Quo
 - b. Equalization
 - c. Single Value Bucket
 - d. Receipt Contracting
 - e. Producer Directed
 - f. Regulated Business
 - g. Other
 8. Entitlement to NGL Value on ATCO Pipelines system

¹ The Board has refined the definition of "Sidestreaming" that was referred to in the Preliminary List of Issues. "Sidestreaming" refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream upstream of existing straddle plant facilities thereby reducing the NGL content of the gas (richness of the gas) that would otherwise have been available for processing at the downstream straddle plant facilities.

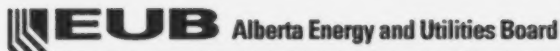
² Co-streaming refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream downstream of existing straddle plant facilities thereby reducing the volume of gas that would otherwise have been available for processing at those straddle plant facilities.

- a. Review of existing practices, any perceived inequities and opportunities for NGL extraction
 - b. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, as they may apply
 - c. Consideration of pipeline interconnection issues
 - d. Tariff and rate implications of changes
9. Entitlement to NGL Value on AUI's system
- a. Review of existing practices, any perceived inequities and opportunities for NGL extraction
 - b. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, as they may apply
 - c. Consideration of pipeline interconnection issues
 - d. Rate implications of changes
10. Is it desirable to implement NGL component tracking gas on transmission pipelines?
Exploration of potential means and methodologies to be used to implement component measurement and tracking?
11. Consideration of NGL Extraction Conventions with respect to EUB regulated facilities on non EUB regulated pipelines including the form of licenses, permits or approvals.

Attachment 4

EUB INQUIRY INTO NGL EXTRACTION MATTERS
Procedural Schedule

Step	Tentative Date(s) (2007)	Revised Date(s) (2007 unless specified)
Inquiry Notice and Scope Submission Request	June 1	June 4
Scope Submissions Due	June 15	June 15
Inquiry Scope Finalized	July 6	July 6
Parties Submissions (simultaneous)	July 23	August 28
Information Requests to Parties	August 7	September 18
Information Responses	August 20	October 9
Rebuttal Submissions	September 10	October 23
Inquiry Expert Submission	September 24	November 6
Information Requests to Inquiry Expert	October 2	November 20
Information Responses	October 9	December 4
Rebuttal to Inquiry Expert Evidence	October 23	December 18
Inquiry	November 5-30 (as required)	January 29 - February 29, 2008
Argument		To be determined
Reply Argument		To be determined



Calgary Office 640 - 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

June 21, 2008

To: Interested Parties

APPLICATION NO. 1513726

INQUIRY INTO NGL EXTRACTION MATTERS (INQUIRY)

**BOARD PROCEDURAL RULING REGARDING IMPACT OF THE APPLICATION BY
TRANSCANADA PIPELINES LIMITED TO THE NATIONAL ENERGY BOARD**

Introduction

On June 17, 2008, TransCanada PipeLines Limited (TransCanada) filed an application (Application) with the National Energy Board (NEB) to bring the TransCanada Alberta System (NGTL System) owned by its wholly-owned subsidiary NOVA Gas Transmission Ltd. (NGTL) under the jurisdiction of the federal regulator. In the Application, TransCanada applied for a certificate of public convenience and necessity (CPCN) with respect to the Alberta System and proposed that the Application be considered in two phases. Phase I would consider the constitutional question of whether the NGTL System is now properly within federal jurisdiction and subject to regulation by the NEB. TransCanada requested that the NEB issue a declaratory order confirming NEB jurisdiction. Phase II would consider whether the NGTL System is required by the present and future public convenience and necessity with a request to issue a CPCN. Phase II would only proceed if the NEB determined the NGTL System to be within federal jurisdiction in Phase I. TransCanada requested that any jurisdictional declaratory order would be made effective upon the issuance of the CPCN.

The Application and an accompanying press release were added by Board staff to the record of the Inquiry as Exhibits 053-58 and 053-57, respectively, on June 17, 2008, being the 23rd day of the oral phase of the Inquiry. The Board set aside Friday, June 20, 2008 to allow all interested parties to make submissions on the implications of the Application to the Inquiry, to the filed evidence and with respect to the appropriateness of continuing with the oral phase of the Inquiry at this time.

The Board heard seven hours of submissions from nineteen parties. Positions of the parties varied significantly on a number of issues.

The writer has been authorized by the Board to convey the within Ruling.

Issues

The Board considers that a ruling is required on the following matters.

1. Does the Board have the jurisdiction to continue with the Inquiry insofar as it may relate to the NGTL System?

2. In the event the Board has the jurisdiction to proceed with the Inquiry, should the Board proceed in light of the Application?
3. If the Board proceeds, are there any process adjustments required? In particular:
 - a. should NGTL be asked to present a panel knowledgeable as to both the Application and NGTL's evidence in this Inquiry? and
 - b. should parties who wish to supplement their pre-filed evidence be allowed to do so in order to address any substantive changes that may be required as a result of the filing of the Application?

Ruling Synopsis

The Board finds that it continues to have jurisdiction with respect to the NGTL System until such time as a competent authority determines otherwise. The Board sees no reason to terminate the Inquiry or to adjourn it pending an NEB decision on the Application. Further, the Board is not convinced that amendments to the scope or to the objectives of the Inquiry are necessary.

NGTL will be required to present a panel knowledgeable with respect to the Application and the NGTL evidence filed in this Inquiry on Tuesday, June 24, 2008. Following the NGTL panel, the Taylor NGL Limited Partnership (Taylor) panel may be seated. Any party that has not yet appeared will have the option of proceeding following the Taylor panel.

Upon completion of cross-examination of the Taylor panel and any other panel that wishes to proceed, the Inquiry will be adjourned, if necessary, until July 7, 2008 to provide an opportunity to file supplemental submissions to those parties who wish to do so. Supplemental submissions shall be solely for the purpose of amending or supplementing pre-filed evidence to reflect substantive changes necessitated by the filing of the Application. Supplemental submissions must be filed prior to 3:00 p.m. July 3, 2008.

Detailed Ruling

1. Does the Board have the jurisdiction to continue with the Inquiry insofar as it may relate to the NGTL System?

The Board finds that it continues to have jurisdiction with respect to the NGTL System until such time as a competent authority determines otherwise. No authority has been provided to the Board which would suggest that the Board has lost its jurisdiction merely as a result of the filing of the Application, or based on the assertion of TransCanada in the Application that the NGTL System is by law properly within Canadian federal jurisdiction. To the contrary, the Board agrees with those parties that suggested that the Board and its successor tribunal, the Alberta Utilities Commission, have a statutory obligation to regulate NGTL and to do so in the Alberta public interest.

The Board agrees with parties that submitted that jurisdiction is a matter of law and until such time as a competent authority determines, as a matter of law, that jurisdiction over the NGTL System is properly vested in another tribunal, the Board will not abdicate its responsibilities by failing to carry out its statutory mandate to regulate the NGTL System.

2. In the event the Board has the jurisdiction to proceed with the Inquiry, should the Board proceed in light of the Application?

Some parties suggested that jurisdiction to continue with the Inquiry is not the issue, rather, the appropriate questions to consider are whether, or to what extent, the Board should continue with the Inquiry in the circumstances. The Board has carefully considered this issue. In particular, the Board has considered the potential for partial duplication of proceedings before a different regulator; the potential that any change to an extraction convention directed by the Board may not be fully implemented at the time a future regulator may assume jurisdiction over the NGTL System; and the heavy demands on the time and resources of the parties to the Inquiry. The Board has also considered that the Inquiry, in part, is dealing with a matter that has been at issue for at least a decade and several parties stated or implied that further delay would result in prejudice to them.

The Board agrees with those parties that submit the Board must deal with the facts as they exist today, and must carry out its public interest responsibilities as they exist today. The granting of the relief requested by TransCanada is uncertain. Further, a great deal of uncertainty was expressed by parties in relation to the timing of any approval. It is also unclear if references or appeals to the Courts would be required before matters are finally resolved. In light of these uncertainties, the Board considers it not only appropriate, but necessary in the public interest, to continue with the Inquiry process.

Although the Board recognizes the concerns expressed by some parties to the hearing that decisions of the Board relating to the NGL extraction convention as it applies to NGTL could potentially be overturned or amended in some fashion by a successor regulator, the Board does not consider this to be sufficient reason to unduly adjourn, delay the Inquiry or to amend its scope.

The Board considers it to be in the public interest to complete the Inquiry and to render a report, utilizing the substantial evidentiary record before it, a record which was accumulated with broad stakeholder participation and an independent Inquiry Expert. The Inquiry is a unique opportunity to consider, in a comprehensive fashion, various NGL and resource related issues directly relevant to the public interest. Further, it represents the culmination of a process reflecting issues and concerns that have been outstanding since before the 1996 Gulf Strachan Decision (Decision D96-07).

Accordingly, the Board does not consider it appropriate to terminate the Inquiry or to adjourn it pending an NEB decision on the Application. Further, the Board is not convinced that amendments to the scope or to the objectives of the Inquiry are necessary.

3. *If the Board proceeds, are there any process adjustments required? In particular:*
- should NGTL be asked to present a panel knowledgeable as to both the Application and NGTL's evidence in this Inquiry?; and*
 - should parties who wish to supplement their pre-filed evidence be allowed to do so in order to address any substantive changes that may be required as a result of the filing of the Application?*

The Board considers that it would assist the Board and parties if NGTL provides a panel for cross-examination, exclusively for the purposes of addressing changes, amendments or corrections, if any, to NGTL's pre-filed evidence and testimony necessitated by and related to the filing of the Application. The Board does not consider it appropriate that NGTL witnesses be

questioned with respect to any aspect of the Application not directly related to a matter before the Board in this Inquiry.

Accordingly, the Board directs NGTL to provide a witness panel for cross-examination on Tuesday, **June 24, 2008 at 9:00 a.m.** The panel should be prepared to address the issues outlined above.

Given the submissions by counsel for Taylor that Taylor had no requirement to supplement its evidence in light of the Application, and recognizing Taylor's desire to ensure the Inquiry proceeds in a timely manner, the Board assumes that the Taylor panel would be prepared to be seated for cross-examination immediately following the NGTL panel. The Board asks Taylor to advise the Board by **3:00 p.m. on Monday June 23, 2008** if that panel wishes to proceed following the appearance by NGTL.

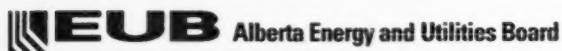
The Board has carefully considered representations by counsel for certain parties that pre-filed evidence may have been different had the Application been filed prior to the submission of this evidence. The Board agrees that the filing of the Application is a material event. The Board notes that the parties that have raised the above concern have not, as of yet, completed their appearances at the Inquiry. The Board offers these parties the option of proceeding with their appearances following the Taylor panel and addressing any changes in position at that time. In the alternative these parties may file supplemental submissions and appear at a later date. Such supplemental submissions must relate to a substantive change in policy position or supporting evidence which is a direct consequence of the filing of the Application, and must be filed by **3:00 p.m. on July 3, 2008**. Panels would be seated to address all evidence including the supplemental submissions commencing **Monday July 7, 2008**.

The Board asks any party that has not completed its appearance, to advise the Board by **3:00 p.m. on Monday June 23, 2008** whether that party wishes to proceed following the Taylor panel or following the filing of supplemental submissions.

All submissions and correspondence should be sent via electronic mail to filings@auc.ab.ca. If you have any questions, please contact either Kim Eastlick by email at kim.eastlick@ercb.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@auc.ab.ca or by telephone at (403) 592-4419.

Yours truly,

Brian C. McNulty
Board Counsel



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

Exhibit No. 053-021

February 15, 2008

APPLICATION NO. 1513726
INQUIRY INTO NGL EXTRACTION MATTERS (INQUIRY)
SPG PRELIMINARY MATTER REGARDING UNSPONSORED EVIDENCE

On January 11, 2008, the Board received a letter¹ on behalf of the Straddle Plant Group (SPG) requesting the Board to issue a ruling. SPG identified the issue as “the weight to be accorded to evidence and statements submitted by parties who are not putting up witness panels” (Un-sponsored Evidence). In particular, SPG noted the filings of the Alberta Department of energy (ADOE) and the State of Alaska (SOA). The SPG requested a ruling “that unsponsored evidence will be given little or no weight in the Board’s decision-making process and its ultimate determination” (the Ruling Request).

On January 14, 2008, the Board issued a letter² requesting SPG to provide a written submission supporting the Ruling Request and provided interested parties the opportunity to respond to the Ruling Request with a further right of reply extended to SPG. The SPG provided the requested additional submission on January 22, 2008,³ and submissions responding to the Ruling Request were received on January 29, 2008, from the ADOE,⁴ SOA,⁵ NOVA Gas Transmission Ltd.,⁶ and Pembina Pipeline Corporation.⁷ SPG replied to these submissions on February 4, 2008.⁸

The writers have been authorized by the Board to provide the following ruling with respect to the Ruling Request.

Ruling

The Board appreciates the submissions filed by Participants and found them generally responsive to the issue before the Board. The Board considers that the principles to be applied to a consideration of Un-sponsored Evidence before this Inquiry should be similar to those generally applied to a proceeding brought in the normal course by an applicant.

Consideration of Un-sponsored Evidence turns on relevance and the appropriate weight merited in the particular circumstances. In this regard, the Board notes that no Participant in the Inquiry has suggested that the Un-sponsored Evidence is not relevant, and the Board agrees that the

¹ Exhibit No. 042-14
² Exhibit No. 001-23
³ Exhibit No. 042-16
⁴ Exhibit No. 002-10
⁵ Exhibit No. 041-04
⁶ Exhibit No. 034-14
⁷ Exhibit No. 036-08
⁸ Exhibit No. 053-007

ADOE and SOA Un-sponsored Evidence is relevant to the matters before the Inquiry. Relevant but Un-sponsored Evidence, will customarily be accepted by the Board, but the Board acknowledges that caution should be exercised in evaluating evidence that has not been fully tested. Therefore, the Board has ordinarily discounted the weight of such evidence, or attributed to it no weight at all, however, the appropriate time for the Board to make the determination as to weight of relevant Un-sponsored Evidence is after it has heard all the evidence and has received the benefit of argument from all parties on all relevant matters, including the appropriate weight to accord the Un-sponsored Evidence.

In evaluating the weight to be accorded Un-sponsored Evidence, the Board must take into account the nature of the proceedings and the circumstances of the particular matter before the Board. Further, the Board must carefully consider issues of procedural fairness including the opportunities of parties to otherwise test and to refute the Un-sponsored Evidence through information requests, rebuttal evidence and argument. Finally, the Board must assess the materiality and potential prejudice to parties in each such instance prior to determining weight. It would ordinarily be inappropriate for the Board to make these determinations until after the close of the proceeding.

Accordingly, the Board declines to provide the Ruling Request.

The Board notes that the SOA "does not deny the importance of the right of cross-examination" and indicated its willingness to provide a witness panel for cross-examination should the Board so consent. The Board provides the requested consent and suggests the SOA contact either of the undersigned in order to establish the requested date certain for its appearance.

If you have any questions, please contact either Kim Eastlick by email at kim.eastlick@ercb.ca or by telephone at (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@auc.ab.ca or by telephone at (403) 297-3539.

Yours truly,

(sent via email)

Heather Gnenz and Kim Eastlick
Application Officers

⁹ SOA Letter dated January 29, 2008, page 4



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

November 21, 2007

APPLICATION NO. 1513726

INQUIRY INTO NGL EXTRACTION MATTERS (Inquiry)

SHELL MOTION TO COMPEL BETTER RESPONSES TO SHELL INFORMATION REQUESTS TO THE STRADDLE PLANT GROUP

On October 29, 2007, the Alberta Energy and Utilities Board (the Board or EUB) received a letter from Shell Canada Energy, Coral Energy Canada Inc., Shell Canada Products, and Shell Chemicals Canada Ltd. (Shell) containing a motion to compel better responses to specific Shell Information Requests to the Straddle Plant Group (SPG) (the Motion). Shell filed its motion pursuant to subsection 29(2) and Section 9 of the *Rules of Practice*.

Following the Board's letter of October 31, 2007, setting out a process with respect to the Motion, the Board received and approved a request on behalf of NOVA Chemicals Corporation (NOVA Chemicals) to be allowed the opportunity to comment as well. The basis for the request related to the commercial arrangements between straddle plants and NOVA Chemicals. Consistent with the process set by the Board, SPG and NOVA Chemicals provided a response on November 5, 2007, and Shell replied on November 7, 2007.

The writer has been authorized by the Board to provide its Ruling in respect of the Motion.

The Board has considered carefully the Motion and the arguments presented by parties both in favor and opposed to the Motion. For the reasons discussed below the Board denies the Motion.

The Board recognizes that the present Inquiry is different from the usual proceeding before the Board which is typically concerned with consideration of an application by a rate regulated utility or by the operator of Board regulated facilities. The Inquiry has been called by the Board and participation in the Inquiry has been on a voluntary basis. The Board's objectives include making determinations on the matters within the scope of the Inquiry based on the best available information. However, at this time, the Board does not consider it appropriate to be directing participants to provide evidence that they do not voluntarily wish to provide, even if that evidence is within the scope of the proceeding and might be helpful to participants or to the Board.

This does not mean that the information requested in the Motion, where relevant, can not be pursued by Shell, other participants in the Inquiry, or by the Board in the oral hearing. Further, the Board is not indicating by this Ruling that it will refrain from subsequently directing participants in the Inquiry to file information, if in the circumstances then under consideration, it considers such information relevant, material and required; either to allow the Board to reach its determinations in the overall public interest or in order to prevent unfairness to a participant.

The Board reminds parties, however, that assertions of financial hardship or other undesirable consequences from a change in extraction conventions must, as do assertions of benefits from a change in conventions, be supported by sufficient evidence (filed on a confidential basis or otherwise) if parties wish the Board to give weight to such assertions. Assertions without supporting evidence will, as in all proceedings before the Board, be accorded the appropriate weight by the Board in its deliberations.

If you have any questions, please contact either Kim Eastlick by email at kim.eastlick@eub.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@eub.ca or by telephone at (403) 297-3539.

Yours truly,

(sent via email)

Heather Gnenz and Kim Eastlick
Application Officers



Calgary Office 640 - 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

February 1, 2008

APPLICATION NO. 1513726

INQUIRY INTO NGL EXTRACTION MATTERS (INQUIRY)

SHELL REQUEST FOR DIRECTION AS TO THE SCOPE OF THE INQUIRY

The Alberta Energy and Utilities Board (the Board) received a letter from Shell Canada Energy, Shell Energy North America (Canada) Inc., Shell Canada Products, and Shell Chemicals Canada Ltd. (Shell), requesting direction as to the scope of the Inquiry. By letter dated January 24, 2008, the Board requested that parties submit their views on the Shell request by January 28, 2008, and for Shell to reply by January 30, 2008.

Submissions were received on behalf of Alberta Department of Energy, Aux Sable Canada Ltd., ConocoPhillips Canada Limited, EnCana Corporation, Industrial Gas Consumers Association of Alberta, Inter Pipeline Fund and Provident Energy Ltd., Nexen Inc., NOVA Gas Transmission Ltd., Western Export Group, and Tenaska Marketing Canada.

The writers have been authorized by the Board to provide the following ruling with respect to the Shell request for clarification of the scope of the Inquiry.

Public interest and public policy issues with respect to how natural gas is used within Alberta are not within the scope of the Inquiry, except to the extent that such uses have implications for NGL supply and demand. The forecasted intra-Alberta supply and demand for natural gas as well as the impacts of such supply and demand forecasts on:

- NGL recovery;
- the efficiency of NGL recovery; and
- NGL markets,

are clearly within the scope of the Inquiry. Accordingly, forecasted increases in natural gas as a fuel in bitumen and synthetic crude production, along with any other forecasted material increase in intra-Alberta natural gas demand, are relevant to the Inquiry to the degree they may materially impact the supply of NGLs.

As stated by the Board in its letter of July 6, 2007, "...the Board anticipates that the outcomes of the Inquiry may include any of the following:

- A description of current or proposed NGL extraction conventions on EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines (NGL

Extraction Conventions), *current issues and trends in gas supply, composition and NGL recovery;*

- *Guidelines or other criteria to assist industry with respect to the economic, orderly and efficient development of Alberta's natural resources as it may relate to NGL extraction rights and facilities development including matters related to sidestreaming and co-streaming;*
- *The identification of new conditions for new facility licenses, permits or approvals; and*
- *Potential recommendations to the Government of Alberta on policy matters beyond the mandate of the Board. [emphasis added]*

In this context, the Board may, as a result of the Inquiry, consider the advisability of establishing, or recommending to government that it establish through legislation, public interest criteria or guidelines as one factor to be taken into account by a regulator when considering any industrial facility or pipeline application which could have a material detrimental impact on NGL recovery or extraction infrastructure. These criteria or guidelines would be considered in co-streaming and sidestreaming facility applications as well as any facility or pipeline application which would increase the intra-Alberta consumption of natural gas, to the extent that approval of an application might result in a material detrimental impact on NGL recovery or extraction infrastructure.

Questions may be addressed by contacting either Kim Eastlick by email at kim.eastlick@ercb.ca or by telephone at (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@auc.ab.ca or by telephone at (403) 297-3539.

Yours truly,

(sent via email)

Heather Gnenz and Kim Eastlick
Application Officers



Calgary Office 640 - 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

May 15, 2008

APPLICATION NO. 1513726
INQUIRY INTO NGL EXTRACTION MATTERS (INQUIRY)
NEW MATTERS SUBMISSION BY ZIFF ENERGY
MOTION BY NOVA GAS TRANSMISSION LTD.

Submission on "New Matters" Not Required

In a letter dated February 11, 2008, the Alberta Energy and Utilities Board (Board) established a process whereby parties could request the Board to direct the Inquiry Expert, Ziff Energy Group (Ziff Energy), to consider the "potential impact of a material event, material change in circumstance or discovery of new material information that may occur or becomes available subsequent to the close of Part 1 of the Inquiry (New Matter)" that may require Ziff Energy to alter or amend its assessment or conclusions. In the event such a New Matter arose, Ziff Energy would be given the opportunity to file a submission and parties would have the opportunity to cross-examine Ziff Energy on the new submission at the commencement of Part 2 of the oral portion of the Inquiry. Parties were directed to provide any such request to the Board by May 9, 2008.

No party, including NOVA Gas Transmission Ltd. (NGTL), has filed a request with the Board asking Ziff Energy to prepare an additional submission in respect of a particular New Matter. The Board also does not see the need for Ziff Energy to prepare an additional submission. Accordingly, Ziff Energy will not be directed to file a new submission as contemplated by the Board's February 11th letter and Ziff Energy will not appear for further cross-examination at the commencement of Part 2 of the oral portion of the Inquiry.

NGTL Motion

On May 9, 2008, NGTL filed a motion (Motion) pursuant to section 9 of the Board's *Rules of Practice*. The Motion requested the Board to direct Ziff Energy to advise the Board whether any evidence arising through the cross-examination of other parties during Part 2 of the oral portion of the Inquiry would cause Ziff Energy to alter or amend its evidence. The Motion further requested that if an amendment was filed, that Ziff would reappear for cross-examination on the new submission.

NGTL advanced several arguments in support of the Motion. Among these grounds, NGTL referred to the Board's letter of February 11, 2008, which established the mechanism whereby Ziff Energy could be requested to provide submissions on New Matters. NGTL also referred to the Board letter of July 6, 2007, which clarified the role of the Inquiry Expert. NGTL submitted that the requested directions were consistent with both the role and function of the Inquiry Expert as well as the Board's objectives of ensuring that the information before the Inquiry was relevant and current. NGTL concluded its submission by stating:

...the public interest would not be serviced if parties were left in a position to argue that the evidence of the Inquiry Expert should be discounted or accorded little weight because it was based on only part of the record in this proceeding.

Ruling on Motion

The writer has been authorized by the Board to communicate the within Ruling on the Motion.

The Board has carefully considered the submission put forward by NGTL in the Motion and for the reasons stated below the Motion is denied.

February 11, 2008 Letter

The process established by the Board in its February 11th letter was specifically created in response to the necessity to divide the oral hearing into two parts with the parts being separated by several months. It was intended to ensure that all oral testimony was provided by parties with a common understanding of material facts and circumstances relevant to the Inquiry. Consequently, to the extent a New Matter arose between the conclusion of Part 1 of the oral phase of the Inquiry and Part 2 of the oral phase of the Inquiry, the Board considered it appropriate that Ziff Energy be asked to address the impact of any such New Matter prior to the continuation of the oral phase of the proceeding. This additional process was not intended in any way to amend the original process steps established for the submission of Inquiry Expert evidence and the reply to and testing of that evidence by parties.

Role of Board Expert

The Board process established for the Inquiry did not contemplate a step subsequent to the close of the oral portion of the Inquiry for the Board Expert to reexamine its analysis and conclusions in light of the cross-examination of parties. The Board is the appropriate entity to assess all of the evidence before it and to make determinations on the issues before it based on the record and taking all considerations in to account, including the fact that the Inquiry Expert has not been requested to provide further updates to its submissions, nor has it been requested to file argument or to assess argument filed by others.

Procedural Fairness

The Board's process and schedule have provided parties with the opportunity to fully test (through information requests and cross-examination) and to reply to (through written reply evidence) the evidence of the Board Expert. Parties will also have the opportunity to file argument at the close of the proceeding which may touch on the evidence of the Board Expert including any matters arising out of cross-examination of parties, any circumstances that may have occurred since the Board Expert testified and on the continued relevance and appropriate weight of that evidence. The Board notes that parties have had ample opportunity to ensure that the Board Expert understood their respective positions, the positions of the other parties and to cross-examine the Board Expert as to that understanding. The Board does not consider that additional Board Expert submissions are required to ensure procedural fairness.

Yours truly,

(sent via email)

Brian C. McNulty
Board Senior Counsel



Calgary Office 640 - 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

June 21, 2008

To: Interested Parties

APPLICATION NO. 1513726

INQUIRY INTO NGL EXTRACTION MATTERS (INQUIRY)

**BOARD PROCEDURAL RULING REGARDING IMPACT OF THE APPLICATION BY
TRANSCANADA PIPELINES LIMITED TO THE NATIONAL ENERGY BOARD**

Introduction

On June 17, 2008, TransCanada PipeLines Limited (TransCanada) filed an application (Application) with the National Energy Board (NEB) to bring the TransCanada Alberta System (NGTL System) owned by its wholly-owned subsidiary NOVA Gas Transmission Ltd. (NGTL) under the jurisdiction of the federal regulator. In the Application, TransCanada applied for a certificate of public convenience and necessity (CPCN) with respect to the Alberta System and proposed that the Application be considered in two phases. Phase I would consider the constitutional question of whether the NGTL System is now properly within federal jurisdiction and subject to regulation by the NEB. TransCanada requested that the NEB issue a declaratory order confirming NEB jurisdiction. Phase II would consider whether the NGTL System is required by the present and future public convenience and necessity with a request to issue a CPCN. Phase II would only proceed if the NEB determined the NGTL System to be within federal jurisdiction in Phase I. TransCanada requested that any jurisdictional declaratory order would be made effective upon the issuance of the CPCN.

The Application and an accompanying press release were added by Board staff to the record of the Inquiry as Exhibits 053-58 and 053-57, respectively, on June 17, 2008, being the 23rd day of the oral phase of the Inquiry. The Board set aside Friday, June 20, 2008 to allow all interested parties to make submissions on the implications of the Application to the Inquiry, to the filed evidence and with respect to the appropriateness of continuing with the oral phase of the Inquiry at this time.

The Board heard seven hours of submissions from nineteen parties. Positions of the parties varied significantly on a number of issues.

The writer has been authorized by the Board to convey the within Ruling.

Issues

The Board considers that a ruling is required on the following matters.

1. Does the Board have the jurisdiction to continue with the Inquiry insofar as it may relate to the NGTL System?

2. In the event the Board has the jurisdiction to proceed with the Inquiry, should the Board proceed in light of the Application?
3. If the Board proceeds, are there any process adjustments required? In particular:
 - a. should NGTL be asked to present a panel knowledgeable as to both the Application and NGTL's evidence in this Inquiry? and
 - b. should parties who wish to supplement their pre-filed evidence be allowed to do so in order to address any substantive changes that may be required as a result of the filing of the Application?

Ruling Synopsis

The Board finds that it continues to have jurisdiction with respect to the NGTL System until such time as a competent authority determines otherwise. The Board sees no reason to terminate the Inquiry or to adjourn it pending an NEB decision on the Application. Further, the Board is not convinced that amendments to the scope or to the objectives of the Inquiry are necessary.

NGTL will be required to present a panel knowledgeable with respect to the Application and the NGTL evidence filed in this Inquiry on Tuesday, June 24, 2008. Following the NGTL panel, the Taylor NGL Limited Partnership (Taylor) panel may be seated. Any party that has not yet appeared will have the option of proceeding following the Taylor panel.

Upon completion of cross-examination of the Taylor panel and any other panel that wishes to proceed, the Inquiry will be adjourned, if necessary, until July 7, 2008 to provide an opportunity to file supplemental submissions to those parties who wish to do so. Supplemental submissions shall be solely for the purpose of amending or supplementing pre-filed evidence to reflect substantive changes necessitated by the filing of the Application. Supplemental submissions must be filed prior to 3:00 p.m. July 3, 2008.

Detailed Ruling

1. Does the Board have the jurisdiction to continue with the Inquiry insofar as it may relate to the NGTL System?

The Board finds that it continues to have jurisdiction with respect to the NGTL System until such time as a competent authority determines otherwise. No authority has been provided to the Board which would suggest that the Board has lost its jurisdiction merely as a result of the filing of the Application, or based on the assertion of TransCanada in the Application that the NGTL System is by law properly within Canadian federal jurisdiction. To the contrary, the Board agrees with those parties that suggested that the Board and its successor tribunal, the Alberta Utilities Commission, have a statutory obligation to regulate NGTL and to do so in the Alberta public interest.

The Board agrees with parties that submitted that jurisdiction is a matter of law and until such time as a competent authority determines, as a matter of law, that jurisdiction over the NGTL System is properly vested in another tribunal, the Board will not abdicate its responsibilities by failing to carry out its statutory mandate to regulate the NGTL System.

2. In the event the Board has the jurisdiction to proceed with the Inquiry, should the Board proceed in light of the Application?

Some parties suggested that jurisdiction to continue with the Inquiry is not the issue, rather, the appropriate questions to consider are whether, or to what extent, the Board should continue with the Inquiry in the circumstances. The Board has carefully considered this issue. In particular, the Board has considered the potential for partial duplication of proceedings before a different regulator; the potential that any change to an extraction convention directed by the Board may not be fully implemented at the time a future regulator may assume jurisdiction over the NGTL System; and the heavy demands on the time and resources of the parties to the Inquiry. The Board has also considered that the Inquiry, in part, is dealing with a matter that has been at issue for at least a decade and several parties stated or implied that further delay would result in prejudice to them.

The Board agrees with those parties that submit the Board must deal with the facts as they exist today, and must carry out its public interest responsibilities as they exist today. The granting of the relief requested by TransCanada is uncertain. Further, a great deal of uncertainty was expressed by parties in relation to the timing of any approval. It is also unclear if references or appeals to the Courts would be required before matters are finally resolved. In light of these uncertainties, the Board considers it not only appropriate, but necessary in the public interest, to continue with the Inquiry process.

Although the Board recognizes the concerns expressed by some parties to the hearing that decisions of the Board relating to the NGL extraction convention as it applies to NGTL could potentially be overturned or amended in some fashion by a successor regulator, the Board does not consider this to be sufficient reason to unduly adjourn, delay the Inquiry or to amend its scope.

The Board considers it to be in the public interest to complete the Inquiry and to render a report, utilizing the substantial evidentiary record before it, a record which was accumulated with broad stakeholder participation and an independent Inquiry Expert. The Inquiry is a unique opportunity to consider, in a comprehensive fashion, various NGL and resource related issues directly relevant to the public interest. Further, it represents the culmination of a process reflecting issues and concerns that have been outstanding since before the 1996 Gulf Strachan Decision (Decision D96-07).

Accordingly, the Board does not consider it appropriate to terminate the Inquiry or to adjourn it pending an NEB decision on the Application. Further, the Board is not convinced that amendments to the scope or to the objectives of the Inquiry are necessary.

3. *If the Board proceeds, are there any process adjustments required? In particular:*
- a. *should NGTL be asked to present a panel knowledgeable as to both the Application and NGTL's evidence in this Inquiry?; and*
 - b. *should parties who wish to supplement their pre-filed evidence be allowed to do so in order to address any substantive changes that may be required as a result of the filing of the Application?*

The Board considers that it would assist the Board and parties if NGTL provides a panel for cross-examination, exclusively for the purposes of addressing changes, amendments or corrections, if any, to NGTL's pre-filed evidence and testimony necessitated by and related to the filing of the Application. The Board does not consider it appropriate that NGTL witnesses be

questioned with respect to any aspect of the Application not directly related to a matter before the Board in this Inquiry.

Accordingly, the Board directs NGTL to provide a witness panel for cross-examination on **Tuesday, June 24, 2008 at 9:00 a.m.** The panel should be prepared to address the issues outlined above.

Given the submissions by counsel for Taylor that Taylor had no requirement to supplement its evidence in light of the Application, and recognizing Taylor's desire to ensure the Inquiry proceeds in a timely manner, the Board assumes that the Taylor panel would be prepared to be seated for cross-examination immediately following the NGTL panel. The Board asks Taylor to advise the Board by **3:00 p.m. on Monday June 23, 2008** if that panel wishes to proceed following the appearance by NGTL.

The Board has carefully considered representations by counsel for certain parties that pre-filed evidence may have been different had the Application been filed prior to the submission of this evidence. The Board agrees that the filing of the Application is a material event. The Board notes that the parties that have raised the above concern have not, as of yet, completed their appearances at the Inquiry. The Board offers these parties the option of proceeding with their appearances following the Taylor panel and addressing any changes in position at that time. In the alternative these parties may file supplemental submissions and appear at a later date. Such supplemental submissions must relate to a substantive change in policy position or supporting evidence which is a direct consequence of the filing of the Application, and must be filed by **3:00 p.m. on July 3, 2008**. Panels would be seated to address all evidence including the supplemental submissions commencing **Monday July 7, 2008**.

The Board asks any party that has not completed its appearance, to advise the Board by **3:00 p.m. on Monday June 23, 2008** whether that party wishes to proceed following the Taylor panel or following the filing of supplemental submissions.

All submissions and correspondence should be sent via electronic mail to filings@auc.ab.ca. If you have any questions, please contact either Kim Eastlick by email at kim.eastlick@ercb.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@auc.ab.ca or by telephone at (403) 592-4419.

Yours truly,

Brian C. McNulty
Board Counsel



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

August 15, 2008

To: Interested Parties

**APPLICATION NO. 1513726
INQUIRY INTO NGL EXTRACTION MATTERS (INQUIRY)
RULING REGARDING MOTION AND NOTICE OF QUESTION OF
CONSTITUTIONAL LAW**

On June 27, 2008, BP Canada Energy Company, Inter Pipeline Fund, Provident Energy Ltd., ATCO Midstream Ltd. and Spectra Energy Empress L.P. (the Applicants) filed a Motion and Notice of Question of Constitutional Law (Motion) with the Alberta Energy and Utilities Board (EUB or Board). The Motion was filed pursuant to section 12 of the *Administrative Procedures and Jurisdiction Act*, R.S.A. 2000, c. A-3 (APJA) and sections 9 and 23.1 of the *Alberta Energy and Utilities Board Rules of Practice*, AR 101/2001.

The Motion requested:

...a determination that issues respecting NOVA Gas Transmission Limited's ("NGTL") tariffs, tolls, operations and practices, including any proposed change in contracting convention for natural gas liquids ("NGLs") extraction rights in the common stream on the NGTL system, are *ultra vires* the Board, as the NGTL system is an interprovincial undertaking. Accordingly, the Board is without jurisdiction to consider these issues in Application No. 1513726 (the "NGL Inquiry").

The Motion requested the following relief:

- a) An interim order staying or adjourning the within Inquiry until determination by this Board, the National Energy Board or a Court of competent jurisdiction of the question of whether NGTL's Alberta System is subject to exclusive federal jurisdiction as part of an interprovincial undertaking;
- b) An Order dismissing consideration of all issues concerning tariffs, tolls, operations and practices, including any proposed change in contracting convention for NGL extraction rights in respect of the common stream on the NGTL system;
- c) Alternatively, an Order staying consideration of all issues concerning tariffs, tolls, operations and practices including any proposed change in contracting convention for NGL extraction rights in respect of the common stream on the NGTL system pending the determination of Phase I of an Application before the National Energy Board for a Certificate of Public Convenience and Necessity and related Approvals for the TransCanada Alberta System dated June 17, 2008;

- d) In the further alternative, an Order referring the Question of Constitutional Law in the form of a special case to the Court of Queen's Bench of Alberta, pursuant to s. 13(1)(b) of the *Administrative Procedures and Jurisdiction Act*.

In a letter of July 2, 2008, the Board acknowledged receipt of the Motion and established a written process indicating that it would issue its ruling on the Motion following review of submissions from interested parties and the Applicants' reply.

A submission in favor of the Motion was received from the Western Export Group and Tenaska (WEG/Tenaska) on July 28, 2008.

Submissions opposed to the Motion were received from EnCana Corporation (EnCana); NOVA Gas Transmission Ltd. (NGTL); the Canadian Association of Petroleum Producers (CAPP); Shell Canada Energy, Shell Energy North America (Canada) Inc., Shell Canada Products, and Shell Chemicals Canada Ltd. (Shell); Alberta Department of Energy (ADOE); Imperial Oil Resources and ExxonMobil Canada Energy (Imperial/EMC); ConocoPhillips Canada (ConocoPhillips); NOVA Chemicals Corporation (NOVA Chemicals) and Taylor NGL Partnership Limited (Taylor) on July 28, 2008. (These parties are hereinafter referred to as the "Opposing Respondents").

A Reply Submission from the Applicants was received on August 7, 2008 (Applicants' Reply Submission).

Background

On June 4, 2007 the Board issued a Notice¹ which initiated the present inquiry into matters related to the extraction of natural gas liquids (NGL or NGLs). A Final Scoping Document² incorporated comments from interested parties and was issued by the Board on July 6, 2007. Evidence was filed by interested parties commencing in August, 2007, including evidence from the independent Inquiry Expert retained by the Board. Information Requests and Responses were filed by interested parties and the Inquiry Expert. The oral hearing portion of the Inquiry took place in two stages; the first addressed issues in the Inquiry Expert's evidence and occurred from February 5 to 12, 2008. The second phase of the oral hearing portion of the Inquiry took place from May 27 to July 18, 2008. In total 32 days were required to complete the oral portion of the Inquiry.

On June 17, 2008, during the second phase of the oral portion of the Inquiry, TransCanada PipeLines Limited (TransCanada) filed an application (NEB Application)³ with the National Energy Board (NEB) to bring the TransCanada Alberta System (NGTL System) owned by its wholly-owned subsidiary, NGTL, under the jurisdiction of the federal regulator. In the NEB Application, TransCanada applied for a certificate of public convenience and necessity (CPCN) with respect to the NGTL System and proposed that the application be considered in two phases. Phase I would consider the constitutional question of whether the NGTL System is now properly within federal jurisdiction and subject to regulation by the NEB. TransCanada requested that the NEB issue a declaratory order confirming NEB jurisdiction. Phase II would consider whether the NGTL System is required by the present and future public convenience and necessity and the

¹ Notice, Exhibit 001-01, is attached as Appendix 1

² Final Scoping Document, Exhibit 001-08, is attached as Appendix 2

³ Exhibit 053-58

request to issue a CPCN. Phase II would only proceed if the NEB determined the NGTL System to be within federal jurisdiction in Phase I. TransCanada requested that any jurisdictional declaratory order would be made effective upon the issuance of the CPCN.

At the request of certain of the participants, the Board set aside June 20, 2008 for oral argument on the impact on the Inquiry of the filing of the NEB Application. On June 21, 2008, the Board issued a procedural ruling (June Ruling)⁴ regarding the impact on the Inquiry of the NEB Application. In the June Ruling the Board determined:

The Board finds that it continues to have jurisdiction with respect to the NGTL System until such time as a competent authority determines otherwise. No authority has been provided to the Board which would suggest that the Board has lost its jurisdiction merely as a result of the filing of the Application, or based on the assertion of TransCanada in the Application that the NGTL System is by law properly within Canadian federal jurisdiction. To the contrary, the Board agrees with those parties that suggested that the Board and its successor tribunal, the Alberta Utilities Commission, have a statutory obligation to regulate NGTL and to do so in the Alberta public interest.

The Board agrees with parties that submitted that jurisdiction is a matter of law and until such time as a competent authority determines, as a matter of law, that jurisdiction over the NGTL System is properly vested in another tribunal, the Board will not abdicate its responsibilities by failing to carry out its statutory mandate to regulate the NGTL System.

Submissions in Favor of the Motion

The Applicants, supported by WEG/Tenaska, argued that the Board lacks the jurisdiction to proceed with the Inquiry insofar as it may relate to the tariffs, tolls, operations and practices, including any proposed change in convention for extraction rights to the NGLs entrained within the common stream on the NGTL System, as the NGTL System is an interprovincial undertaking. Among various submissions in support of the Motion, the Applicants submitted that the Board has an obligation to consider its jurisdiction with respect to these matters before continuing with the Inquiry process, a process that will involve a determination that the NGTL System is now a work or undertaking within federal jurisdiction. The Applicants further submitted that the Inquiry is in pith and substance dealing with matters properly under federal jurisdiction.⁵

The Applicants referred to the June Ruling which determined that the Board retains jurisdiction over the NGTL System until a contrary finding is made by a competent authority. The Applicants submitted that the Board is a competent authority under the APJA.⁶ Accordingly, the Board is able to make the determination that the NGTL System meets the criteria set out in *Westcoast Energy Inc. v. Canada*, [1998] 1 S.C.R. 322 at paragraph 65, and is thereby subject to exclusive federal jurisdiction pursuant to the effect of sections 91(29) and 92(10)(a) of the *Constitution Act, 1867*.⁷

⁴ June Ruling, Exhibit 053-63, is attached as Appendix 3

⁵ Applicants' Reply Submission, paragraph 43

⁶ Applicants' Reply Submission, paragraphs 7 and 71

⁷ Motion, paragraph 47, Applicants' Reply Submission, paragraphs 14 and 59

The Applicants further enumerated a number of “features” starting at paragraph 59 of the Motion in support of a request for a stay of all issues concerning tariffs, tolls, operations and practices on the NGTL System pending the determination of Phase I of the NEB Application.

Submissions Opposed to the Motion

Set out below are certain of the key submissions of the Opposing Respondents as well as the Reply comments by the Applicants.

Motion Is out of Time

NGTL suggested that the Motion was not properly before the Board for failure to meet the requirement of subsection 12(1)(a) of the APJA to provide notice “at least 14 days prior to the date of the proceeding”. Noting that the Notice was issued on June 4, 2007 and the oral hearing began on February 5, 2008, NGTL submitted that the Motion was out of time.⁸

The Applicants responded by suggesting that NGTL’s interpretation of the notice requirement was overly technical and that it should be interpreted as applying to the hearing of the Motion. The Applicants suggested that the legislative requirement was intended to ensure sufficient notice to the Attorney Generals for Alberta and Canada, neither of whom has complained of insufficient notice.

Is the Board Able to Make a Jurisdictional Determination with Respect to the NGTL System?

Most of the Opposing Respondents and the Applicants did not take issue with the proposition that the Board was a competent authority able to make a determination with respect to its continued jurisdiction over the NGTL System and to address a constitutional question. Reliance was placed on the APJA and the *Designation of Constitutional Decision Makers Regulation* AR 69/2006. Counsel for CAPP suggested that the “special situation” of NGTL forms an exception to the general powers of the Board in deciding constitutional questions.⁹

Insufficient Evidence

Certain Opposing Respondents submitted that there was insufficient evidence supplied with the Motion to permit the Board to undertake an examination of the jurisdiction over the NGTL System and therefore the Motion should be dismissed.

The Applicants and WEG/Tenaska responded by noting that an NGTL witness confirmed the facts and circumstances contained in the NEB Application in sworn evidence before the Board.¹⁰ Further, if the Board considers that there is insufficient evidence to determine a jurisdictional question, it is open to the Board to take steps to gather and test the evidence it may require.¹¹ Moreover, it is not open to the Board to avoid an examination of its jurisdiction. The Applicants referred¹² to the Alberta Court of Appeal decision in *ATCO Gas and Pipelines Limited v. Alberta (Energy and Utilities Board)*,¹³ wherein the Court vacated a portion of the Board’s decision on the basis that it had failed to determine if certain assets were “non utility” and to address the question of its jurisdiction in respect of such assets.

⁸ July 28, 2008 Submission of NGTL, paragraph 23

⁹ July 28, 2008 Submission of CAPP, pages 2-3

¹⁰ Applicants’ Reply Submission, paragraph 82; July 28, 2008 Submission of WEG/Tenaska, page 2

¹¹ Applicants’ Reply Submission, paragraph 86

¹² Applicants’ Reply Submission, paragraph 9

¹³ *ATCO Gas and Pipelines Ltd. v. Alberta (Energy and Utilities Board)*, 2004 ABCA 3

Stay

Certain Opposing Respondents submitted that the Applicants have failed to meet the requirements of an interlocutory stay application as described in a series of authorities including decisions of the Supreme Court of Canada in *Manitoba (Attorney General) v. Metropolitan Stores (MTS) Ltd.*, [1987] 1 S.C.R. 110 (*Metropolitan Stores*) and *R.J.R. MacDonald Inc. v. Canada (A.G.)* (1994), 111 D.L.R. (4th) 385 (S.C.C.), (*R.J.R. MacDonald*).¹⁴ The Applicants submitted in reply that the tripartite test for a stay of proceedings is not the proper test to be applied in the present circumstances. A stay of the Inquiry process should be granted on the basis of the principles of comity and *forum non conveniens* in favor of the NEB process presently considering the NEB Application.

De facto Doctrine

Imperial/EMC and Shell submitted that the Board could proceed without dealing with the jurisdictional issues and that the *de facto* and/or necessity doctrines are principles that have been applied in situations where a finding of unconstitutionality has been made. Reliance was placed on the *Reference Re: Manitoba Language Rights*, [1985] 1 S.C.R. decision.¹⁵ The Applicants submitted in reply that the *de facto* doctrine is intended only to protect justified expectations of those parties that have relied upon the acts of those administering invalid laws.¹⁶

Reference to Alberta Court of Queen's Bench

NGTL submitted that the legal principle of comity should apply such that the Board should exercise forbearance in addressing the question of jurisdiction over the NGTL System in favor of the NEB which already is in the process of considering the appropriate regulatory jurisdiction.¹⁷ NGTL argued that the principle of comity suggests that qualified decision makers with concurrent jurisdiction over a particular matter should allow the decision to be addressed in the forum where it was first raised, thereby avoiding duplicative proceedings and potentially conflicting outcomes. In support of its position, NGTL referred to the *Cyanamid Reference Case*.¹⁸ In this decision the Ontario Court of Appeal deferred to the Federal Court of Appeal on a matter of jurisdiction over a proposed by-pass pipeline on the principle of comity declaring that "in the absence of special circumstances, priority should be given to the proceedings first commenced".¹⁹

Other Opposing Respondents, including the ADOE²⁰ and Imperial/EMC²¹ supported the application of the principle of comity, regulatory forbearance or *forum conveniens*²² in rejecting the Applicants' request to refer the question of jurisdiction over the NGTL System to the Alberta Court of Queen's Bench. Some of these Opposing Respondents submitted that the application of these principles would direct the Board to defer the issue of regulatory jurisdiction to the NEB, rather than undertaking a jurisdictional process itself.

¹⁴ July 28, 2008 Submission of NGTL, paragraphs 73-79

¹⁵ July 28, 2008 Submission of Imperial/EMC, paragraph 9. July 28, 2008 Submission of Shell, page 5

Applicants' Reply Submission, paragraph 54

¹⁶ July 28, 2008 Submission of NGTL, paragraph 85

¹⁷ *Reference re Legislative Authority over Bypass Pipelines*, (1988) 49 D.L.R. (4th) 566 (Ontario Court of Appeal), (*Cyanamid Reference Case*)

¹⁸ *Cyanamid Reference Case*, page 574

¹⁹ July 28, 2008 Submission of ADOE, paragraph 24

²⁰ July 28, 2008 Submission of Imperial/EMC, paragraph 5

²¹ July 18, 2008 Submission of ADOE, paragraph 28

The Applicants submitted in their Reply Submission that, should the Board accept the position of the Opposing Respondents and apply the principle of comity to the consideration of the appropriate regulatory jurisdiction over the NGTL System, then the entirety of the Inquiry should be deferred until the NEB's decision on the jurisdictional question is issued.²³

Recommendations vs. Decisions and Directions

Some Opposing Respondents have considered the appropriateness of the Board making recommendations, as opposed to directions or decisions as a result of the Inquiry.

While it appears that the Opposing Respondents considered that the Board had the ability to carry out all aspects of the initial scoping documents, including the issuance of decisions and directions if considered appropriate, NGTL submitted that the result of the Inquiry should be recommendations by the Board, not directions or decisions.²⁴

Inquiries May Consider Matters Incidental to Matters under Federal Jurisdiction

Some Opposing Respondents have considered the appropriateness of the Board making recommendations that may relate to the NGTL System, even if it were federally regulated in the future.

NGTL referred to *Canadian Western Bank v. Alberta*, [2007] 2 S.C.R. 3 and the ability of one level of government to enact laws which may "affect" but do not "impair" the core constitutional competence of another level of government. NGTL submitted that because recommendations by the Board under its governing legislation cannot be imposed upon the NEB, there are no restrictions on the ability of the Board to issue recommendations that may "affect" NGTL or pipelines that are presently federally regulated.²⁵ NGTL submitted:

Even if the TransCanada Alberta System were federally regulated, the Board in this Inquiry would have jurisdiction to make recommendations concerning changes to the contracting convention, including the implementation of the NEXT Model. Such recommendations would not serve to "impair" or interfere with the regulation of the interprovincial transportation aspects of the TransCanada Alberta System by the NEB.²⁶

In its submission, Imperial/EMC argued that the Board has full jurisdiction to complete the NGL Inquiry, and in the alternative, it has the ability to make recommendations without regard to a future determination of the jurisdiction over NGTL. Imperial/EMC submitted:

If it is finally determined that NGTL is within the jurisdiction of the NEB, Imperial/EMC submit that the AEUB has the ability to issue recommendations in the NGL Inquiry even though they may have an incidental effect on NGTL. The Courts have recognized that provinces are able to create inquiries into those matters listed under Section 92 of the Constitution Act, 1867, even if the inquiry has an incidental effect on a federal matter.²⁷

In support of this position, Imperial/EMC referred to *Mercier v. Alberta (Attorney General)*, 183 A.R. 177 (A.B.Q.B.), aff'd [1977] 200 A.R. 41 (A.B.C.A.) leave to appeal refused, [1977] S.C.C.A. No. 333 (*Mercier Decision*).

²³ Applicants' Reply Submission, paragraph 45

²⁴ July 28, 2008 Submission of NGTL, paragraph 36

²⁵ July 28, 2008 Submission of NGTL, paragraphs 37-38

²⁶ July 28, 2008 Submission of NGTL, paragraph 37

²⁷ July 28, 2008 Submission of Imperial/EMC, paragraph 18

The Applicants refuted submissions by the Opposing Respondents which asserted that provincial inquiries may be conducted on matters which touch on matters of federal jurisdiction. In support of their position, the Applicants referred to a decision by the Supreme Court of Canada in *Starr v. Houlden*, [1990] 1 S.C.R. 1366 (S.C.C.) (*Starr Decision*). That decision stands for the proposition that an inquiry conducted under provincial legislation may incidentally touch on matters of federal jurisdiction but where the inquiry is predominantly concerned with a matter which is in "pith and substance" a federal matter, provincial jurisdiction is exceeded. The Applicants submitted that the Inquiry "has developed such that the predominant focus has clearly become the appropriate NGL extraction convention and the Alberta System tariff as they affect the reprocessing of the NGTL common stream".²⁸

Ruling

The writer has been authorized by the Board to convey the within Ruling.

The Motion is dismissed. The Applicants have failed to establish to the satisfaction of the Board a sufficient basis for granting any of the requested forms of relief. Details of the Ruling are provided below and are organized by issue.

Motion Is out of Time

With respect to the suggestion that the Motion is out of time, the Board agrees with the Applicants that in the circumstances of the present proceeding it would appear that the objectives of subsection 12(1)(a) of the APJA have been satisfied. These objectives appear to be to provide sufficient time for the Attorney General of Canada and the Minister of Justice and Attorney General of Alberta to review the question of constitutional law and to evaluate the need for participation. The filing of the NEB Application is a material event which supports the filing of the Motion at the stage in the Inquiry in which it was filed.

Is the Board Able to Make a Jurisdictional Determination with Respect to the NGTL System?

The Board agrees that it is a competent authority able to make a determination with respect to constitutional questions in the correct circumstances pursuant to the APJA and the *Designation of Constitutional Decision Makers Regulation*. However, for the reasons stated below, the Board finds it to be unnecessary to make a determination as to whether the present circumstances warrant a determination of jurisdiction over the NGTL System.

Insufficient Evidence

For the reasons stated below, the Board finds it to be unnecessary to make a determination on the sufficiency of the evidence before it with respect to determining jurisdiction over the NGTL System.

Stay

The Board agrees with the Opposing Respondents that the tripartite test described in the *Metropolitan Stores* and *R.J.R. MacDonald* decisions has not been satisfied by the Motion. The test requires a demonstration by the Applicants that a serious question requires determination by the decision maker and that an irreparable harm will result if the stay is not granted. The test further requires an assessment of the balance of convenience to the parties. The Applicants have

²⁸ Applicants' Reply Submission, paragraph 25

failed to establish to the satisfaction of the Board any of the three requirements necessary to grant a stay of matters before the Inquiry.

The "features" supporting a stay enumerated by the Applicants starting at paragraph 59 of the Motion do not establish the likelihood of irreparable harm if the Board continues to proceed to issue recommendations with respect to matters dealt with in the Inquiry. The Board continues to consider that the balance of convenience favors a continuation of the Inquiry process. As stated at page 3 in the June Ruling:

The Board has also considered that the Inquiry, in part, is dealing with a matter that has been at issue for at least a decade and several parties stated or implied that further delay would result in prejudice to them.

The Board agrees with those parties that submit the Board must deal with the facts as they exist today, and must carry out its public interest responsibilities as they exist today. The granting of the relief requested by TransCanada is uncertain. Further, a great deal of uncertainty was expressed by parties in relation to the timing of any approval. It is also unclear if references or appeals to the Courts would be required before matters are finally resolved. In light of these uncertainties, the Board considers it not only appropriate, but necessary in the public interest, to continue with the Inquiry process. ...

The Board considers it to be in the public interest to complete the Inquiry and to render a report, utilizing the substantial evidentiary record before it, a record which was accumulated with broad stakeholder participation and an independent Inquiry Expert. The Inquiry is a unique opportunity to consider, in a comprehensive fashion, various NGL and resource related issues directly relevant to the public interest. Further, it represents the culmination of a process reflecting issues and concerns that have been outstanding since before the 1996 Gulf Strachan Decision (Decision D96-07).

De facto Doctrine

For the reasons stated below, the Board finds it to be unnecessary to make a determination with respect to the applicability of the *de facto* doctrine.

Reference to Alberta Court of Queen's Bench

The Board considers that the effect of a reference to the Court of Queen's Bench would, in the circumstances, be the equivalent of granting a stay of the Inquiry proceeding. For the reasons referred to above with respect to the denial of a stay, and for the reasons stated below, the Board declines to refer a constitutional question to the Alberta Court of Queen's Bench.

For the same reasons the Board is not required to review the applicability of the principles of comity or forum non conveniens. The Board observes however, that the NEB Application was filed with the NEB prior to the Motion being filed in the Inquiry.

The Board also notes the NEB's letter dated July 18, 2008 which accompanied Hearing Order GH-5-2008 in respect of the NEB Application.²⁹ The NEB letter states that the NEB "is of the opinion that dealing with the application expeditiously would be in the public interest" and that "based on the information available at this time, it is expected that decisions on the application will be issued by early in the first quarter of 2009". The NEB Hearing Order demonstrates that the NEB process is fully engaged, that it will be expeditious and that a result is anticipated within

²⁹ The Hearing Order is referred to in paragraph 72 of the Applicants' Reply Submission.

a reasonable time frame. These observations reassure the Board of the appropriateness of its decision that an examination of the jurisdictional status of the NGTL System is neither required nor warranted in the circumstances. The Board also notes, from a practical perspective, that should the NEB be permitted to carry out its processes as planned without an intervening decision on jurisdiction by a competent authority the concerns raised by some parties would be alleviated with respect to the creation of a possible regulatory gap with respect to the NGTL System.

Recommendations vs. Decisions and Directions

The Board has noted the submissions by certain parties with respect to the original range of possible outcomes and objectives for the Inquiry, which included potential decisions or directions to parties with respect to pipeline tariff amendments. Another possible outcome was possible recommendations to the Government of Alberta on matters touched on by the Inquiry.

The possibility that the Board could issue decisions or directions relating to NGTL or the NGTL System appears to be generating much of the concern with respect to the Board's jurisdiction to continue with the Inquiry.

Although the division of the Board into two tribunals, the Energy Resources Conservation Board (ERCB) and the Alberta Utilities Commission (AUC), had been proposed at the time that the Inquiry commenced, the ultimate passage of legislation, the form that legislation might take and the timing of enactment were uncertain. The creation of the ERCB and the AUC as of January 1, 2008 clearly demonstrates the intention of the legislature to phase out any ongoing role for the Board. Accordingly, further proceedings or processes, including compliance filings that could result from directions of this Board would fall to these successor tribunals to consider. Although the Board remains able to issue decisions and directions as originally contemplated, from a practical perspective, the Board considers such measures in the circumstances to be inadvisable. Making recommendations to the applicable authority appears to be the most appropriate method of proceeding. Consequently the Board has determined that it will make recommendations only with respect to the matters dealt with in the Inquiry, rather than issue specific decisions or directions in relation to any such matters.

As noted in the following section, the Board considers that it has the ability in the Inquiry to address matters by way of recommendation that may have an incidental effect on matters under federal regulation. Given that the Board will not be issuing specific decisions or directions to particular parties as a result of the Inquiry and will only be issuing recommendations that may have an incidental effect, if any, on matters under federal regulation, the Board considers questions with respect to the jurisdiction over the NGTL System to be irrelevant. Accordingly, the Board sees no need to reexamine the June Ruling or to further consider the issue of jurisdiction with respect to NGTL or the NGTL System.

Inquiries May Consider Matters Incidental to Matters under Federal Jurisdiction

Parties have considered the ability of the Board to make recommendations that may relate to the NGTL System given the position of the Applicants that the NGTL System should be subject to federal regulation.

A review of the Notice dated June 4, 2007 initiating the Inquiry and of the Final Scoping Document attached to the Board's letter of July 6, 2007 confirms that the Board intended to pursue public interest matters related to NGL extraction that have been outstanding for many

years dating back prior to the 1996 *Gulf Strachan* decision.³⁰ The Inquiry was commenced under broad inquiry powers under several statutes and was stated to be for the purpose of examining issues related to NGL extraction from the perspective of providing for the economic, orderly and efficient development of Alberta's natural resources in the public interest. The Board indicated that:

...it intends to maintain a broad scope for the Inquiry so that the full range of complex and interrelated issues relating to resource development and NGL extraction can be examined and understood.³¹

The Board's jurisdiction to inquire into matters related to providing for the economic, orderly and efficient development of Alberta's oil and gas resources in the public interest³² has not been challenged by the Motion. Similarly, no parties challenged the scope of the Inquiry on jurisdictional grounds when it was first initiated. The Board agrees with Imperial/EMC when it stated:

...Imperial/EMC submit that the AEUB has full jurisdiction to complete the NGL Inquiry, regardless of the final determination of the jurisdiction of NGTL. The NGL Inquiry was called by the AEUB pursuant to its powers under Section 21 of the *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10 and Section 46, as it then was, of the *Public Utilities Board Act*, R.S.A. 2000, c. P-45. The subject of the NGL Inquiry is natural gas liquids which are an important resource in the province of Alberta and which the AEUB and its successor are mandated to conserve. According to the scoping document issued by the AEUB at the beginning of the NGL Inquiry, "[t]he inquiry will examine issues related to NGL extraction from the perspective of maximizing economic, orderly and efficient development of Alberta's natural resources in the public interest". The issues listed in the scoping document are broad and deal with many facets of the Alberta public interest. Furthermore, a wide variety of industry participants have taken part in the NGL Inquiry, some of which are not regulated, some of which are regulated by the AEUB and some of which are regulated by the NEB. NGTL is but one party in the NGL Inquiry. The application of one participant to be regulated by the NEB does not change the AEUB's jurisdiction over the broad matters of Alberta public interest covered by the NGL Inquiry.³³

The Board disagrees with the Applicants when they submitted that the Inquiry would not be able to consider matters that could relate to the NGTL System on the basis that the Inquiry "has developed such that the predominant focus has clearly become the appropriate NGL extraction convention and the Alberta System tariff as they affect the reprocessing of the NGTL common stream".³⁴ Rather, it is the Board's stated intention to consider NGL extraction issues from the perspective of providing for the economic, orderly and efficient development of Alberta's natural resources in the public interest that forms the dominate purpose of the Inquiry and which demonstrates that the "pith and substance" of the Inquiry is "firmly anchored to a provincial head of power".³⁵ To the extent any recommendations made by the Board as a result of the Inquiry

³⁰ Decision D 96-07, *Gulf Canada Resources Limited, Strachan Gas Plant Approval Amendment, NGTL Gas Sidestreaming Application*, dated September 26, 1996, Exhibit 001-08-03

³¹ Board letter of July 6, 2007, page 2

³² *Oil and Gas Conservation Act*, R.S.A. 2000, c. 0-6, Sections 4, 7 and 94; *Energy Resources Conservation Act*, R.S.A. 2000, c. E-10, Sections 2, 3, 20 and 21

³³ July 28, 2008 Submission of Imperial/EMC, paragraph 17

³⁴ Applicants' Reply Submission, paragraph 25

³⁵ *Starr Decision*, page 1401

may have any impact on matters under federal regulation, any such impact would be incidental, a consequence which has been "consistently upheld" by the Supreme Court of Canada.³⁶

The Board agrees with the following submissions of Imperial/EMC in respect of the implications of the *Mercier Decision*:

Imperial/EMC submit that the purpose of the NGL Inquiry is to "examine issues related to NGL extraction from the perspective of maximizing economic, orderly and efficient development of Alberta's natural resources in the public interest." Similar to the inquiry in *Mercier*, the dominant purpose of the NGL Inquiry is a matter which is under provincial jurisdiction, namely the management of the province's natural resources. As a result, regardless of whether NGTL is under federal jurisdiction, the AEUB has the right to investigate and make recommendations regarding the extraction of NGLs and the NGL convention in the Province of Alberta even if such decisions may have an incidental effect on NGTL.³⁷

The Board considers that its clear jurisdiction with respect to providing for the economic, orderly and efficient development of Alberta's natural resources and the interests of those that depend on those resources in the public interest is a sufficient basis for the Board to continue with the Inquiry which will result in the Board, in due course, considering possible recommendations relating to the matters dealt with in the Inquiry.

Conclusion

For the reasons stated above the Motion is dismissed.

Next Steps

The Board will shortly issue a draft outline for written Argument and Reply Argument. Argument must be filed by noon, September 5, 2008. Reply Argument must be filed by noon, September 26, 2008.

Yours truly,

(sent by email)

Brian C. McNulty
Board Counsel

³⁶ *Starr Decision*, pages 1390-1391

³⁷ July 28, 2008 Submission of Imperial/EMC, paragraph 19

Appendix 1
Inquiry Notice



Notice

Appendix 2
July 6, 2007 Final Scoping Letter



Final Scoping Letter
July 6 2007

**Appendix 3
June 21, 2008 Procedural Ruling**



**Procedural Ruling
June 21 2008**



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Notice

NOTICE OF BOARD INITIATED PROCEEDING APPLICATION NO. 1513726 INQUIRY INTO NGL EXTRACTION MATTERS

WHEREAS:

- (a) the Alberta Ethane Policy¹ will expire on June 30, 2008;
- (b) there has been significant evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and the related gas, transportation and natural gas liquids (NGL) markets since the implementation of the Alberta Ethane Policy in July 1990;
- (c) in Decision 2004-006² the Board requested parties to work with NOVA Gas Transmission Ltd. (NGTL) to review the current conventions and practices for extraction for NGLs off the NGTL system which resulted in the *NGL Extraction Convention Task Force Report* dated September 2005 (the Task Force Report); and
- (d) the Board in a letter dated July 24, 2006 reluctantly accepted the Task Force Report despite concerns that many of the key issues and perceived inequities relating to extraction remained unresolved and indicated that it would consider further processes to address these issues,

Take Notice that The Alberta Energy and Utilities Board (EUB or Board) pursuant to Section 21 of the *Energy Resources Conservation Act* RSA 2000, c. E-10, Section 94 of the *Oil and Gas Conservation Act* RSA 2000, c. O-6 and Section 46(1) of the *Public Utilities Board Act* RSA 2000, c. P-45 will hold an inquiry into matters related to NGL extraction from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (the Inquiry).

The Inquiry will examine issues related to NGL extraction from the perspective of maximizing the economic, orderly and efficient development of Alberta's natural resources in the public interest. The issues that the Inquiry will examine include, without limitation:

- existing extraction conventions
- potential dilution of the common stream energy content by lean gas associated with Coal Bed Methane (CBM)
- growing intra-Alberta consumption demand for natural gas
- potential for northern gas; and
- Alberta regulated Straddle facilities on NEB regulated pipelines.

¹ As reflected in IL 90-09 dated July 16, 1990, Section 35 of the *Oil and Gas Conservation Act* RSA 2000, c. O-6 and Part 9.1 of the *Oil and Gas Conservation Regulations* AR 151/71

² Decision 2004-006 – Solex Gas Processing Corp. Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines, dated January 27, 2004.

Purpose of the Inquiry

The evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and the related gas, transportation and NGL markets since the implementation of the Alberta Ethane Policy in July 1990 (set to expire June 30, 2008) have convinced the Board that there is a need for a timely and comprehensive re-examination of historical conventions and practices with respect to the extraction of NGLs on EUB regulated pipelines and facilities. The need for such a review is made further apparent in light of anticipated future developments including the use of EUB regulated pipelines to transport increased amounts of gas sourced outside of Alberta, development of sources of CBM and the growing market for gas within the Province. This Inquiry will consider these conventions and practices to determine if changes are required in the public interest.

Particulars of the Inquiry

A Preliminary Scoping Document and a Preliminary List of Issues to be addressed by the Inquiry and a Tentative Procedural Schedule have been documented and are available for review on the Board's website through IAR Query by selecting Application No. 1513726. The Board requests that parties express their intent to participate in this Inquiry by submitting their intention to participate and comments on the Preliminary Scoping Document and a Preliminary List of Issues.

Please note that neither the EUB cost claim nor intervener funding process will apply to this matter and that all costs incurred by parties will be of their own account. Despite this, the Board is hopeful that parties representing all affected business areas will participate in this Inquiry including:

- Producing companies
- Midstream companies
- Aggregators
- Straddle plant owners and operators including proponents of EUB regulated facilities on NEB regulated pipelines
- Gas transmission pipeline owners and operators
- Shippers on gas transmission pipelines
- Liquids pipeline operators
- Field plant operators with interests in NGLs
- Alberta based Petrochemical plant owners and operators
- Industry groups including IGCAA, CAPP, SEPAC, Canadian Society for Unconventional Gas
- Propane plus market stakeholders
- Consumer groups
- Alberta Government Ministries including those responsible for energy and industry related matters; and
- The Governments, producers, pipeline operators in British Columbia, the Northwest Territories, Yukon and Alaska to the extent they have interests in the transportation of natural gas through EUB regulated facilities.

To File an Intention to Participate

Any party (Participant) wishing to register their intention to participate and submit comments on the Preliminary Scoping Document and a Preliminary List of Issues should submit a letter (Participation Letter) setting out their interest in the Inquiry and contact information by **June 15, 2007**. Each Participant should include with the Participation Letter any comments it wishes to make on the Preliminary Scoping Document, the Preliminary List of Issues or the Tentative Procedural Schedule. Following submissions, the Board will communicate the Final Scoping Document and a Final List of Issues for the Inquiry. Please submit the Participation Letter and comments on the Preliminary Scoping Document and a Preliminary List of Issues electronically to the Board at EUB.UTL@eub.ca. Notification regarding further scheduling or process will only be provided to registered parties.

Process

The Tentative Process Schedule stipulates the filing of Direct Evidence by Participants on matters identified within the Final List of Issues by July 23, 2007. Participant submissions will be followed by Information Requests and Responses, Rebuttal Evidence and an oral hearing anticipated to be held in November 2007. The Board anticipates engaging the services of an independent consultant whose Report would be filed in the Inquiry. Direct Evidence submissions by Participants should address all matters on the Final List of Issues on which the Participant has a position (supporting or opposing) utilizing, where possible, the format employed in the Preliminary List of Issues.

Parties to this proceeding should comply with the Board's general electronic filing guidelines, which require that all e-mails clearly indicate in the "subject" line, the relevant application number, the date, the nature of the submission and the party making the submission. The Board further requests the cooperation of parties by submitting any documents in either Microsoft Word format or an OCR version of any PDF documents.

If you have any questions regarding this matter, please contact either Kim Eastlick by email at kim.eastlick@eub.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@eub.ca or by telephone at (403) 297-3539.

Issued at Calgary, Alberta on June 4, 2007.

ALBERTA ENERGY AND UTILITIES BOARD
Douglas A. Larder, Q.C., General Counsel



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

July 6, 2007

APPLICATION NO. 1513726 INQUIRY INTO NGL EXTRACTION MATTERS

On June 4, 2007, the Alberta Energy and Utilities Board (the Board or EUB) issued a Notice with respect to an Inquiry into Natural Gas Liquids¹ Extraction Matters (the Inquiry). Attached to the Notice were a Preliminary Scoping Document, a Preliminary List of Issues and a Tentative Procedural Schedule. Interested parties were requested to submit a Participation Letter accompanied by comments on the attachments by June 15, 2007. Participation Letters, with or without comments on the attachments to the notice, were received from parties (Parties), all of whom are listed in Attachment 1.

On June 27, 2007, the Board issued a letter informing Parties of a change to the date for evidentiary submissions and the decision of the Board not to hold a pre-hearing conference.

The purposes of this letter are to respond to the comments from Parties and to finalize the Preliminary Scoping Document and the Preliminary List of Issues, describe the role of the independent expert to be engaged by the Board (the Inquiry Expert) and to revise the Procedural Schedule for the Inquiry.

Scope

Preliminary Scoping Document

Although some Parties questioned the meaning of several of the Board's assumptions and pointed out the Board's recognition of the possible conflict among assumptions, in general, the Preliminary Scoping Document received little comment. Parties also requested clarification on the intended outcomes of the Inquiry.

With respect to the intended outcomes of the Inquiry, the Board addressed these in Section 4 of the Preliminary Scoping Document. For greater clarity, however, the Board anticipates that the outcomes of the Inquiry may include any of the following:

- A description of current or proposed NGL extraction conventions on EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines (NGL Extraction Conventions), current issues and trends in gas supply, composition and NGL recovery;

¹ For the purposes of the Inquiry, "Natural Gas Liquids" or "NGLs" means ethane, propane, butane and pentanes plus derived from natural gas.

- Findings as to entitlement to NGL extraction rights with respect to the common stream of EUB regulated pipelines;
- Direction to parties to implement changes to NGL Extraction Conventions including tariff amendments;
- Guidelines or other criteria to assist industry with respect to the economic, orderly and efficient development of Alberta's natural resources as it may relate to NGL extraction rights and facilities development including matters related to sidestreaming² and co-streaming;³
- The identification of new conditions for new facility licenses, permits or approvals; and
- Potential recommendations to the Government of Alberta on policy matters beyond the mandate of the Board.

In light of the absence of significant comment from Parties, the Board does not believe a change is required to the Preliminary Scoping Document other than with respect to the timing of a Board decision. The Board now anticipates an Inquiry Decision mid-year 2008. Attachment 2 is the Final Scoping Document for the Inquiry.

Preliminary List of Issues

Comments received from Parties on the Preliminary List of Issues fall generally into three principal categories:

- The scope is overly broad and should be focused in two general areas:
 - NGL Extraction Conventions
 - Efficient resource development and gas composition issues
- Consideration of the Ethane Policy should be removed from the scope of the Inquiry; and
- The need to consider the impact to existing contractual arrangements and infrastructure investments from any change to the NGL Extraction Conventions.

The Board intends to maintain a broad scope for the Inquiry so that the full range of complex and interrelated issues relating to resource development and NGL extraction can be examined and understood. However, the Board agrees that the issues identified in the Preliminary List of Issues can be grouped to achieve a clearer focus for the Inquiry. This grouping of issues should assist parties and address the three general areas on which Parties commented.

The focus of the Inquiry is on three interrelated principal issues (the Inquiry Principal Issues), each of which may be stated in terms of a question for the Board to address. Each of the Inquiry Principal Issues requires consideration of several interrelated sub-issues:

² The Board has refined the definition of "Sidestreaming" that was referred to in the Preliminary List of Issues. "Sidestreaming" refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream upstream of existing straddle plant facilities thereby reducing the NGL content of the gas (richness of the gas) that would otherwise have been available for processing at the downstream straddle plant facilities.

³ Co-streaming refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream downstream of existing straddle plant facilities thereby reducing the volume of gas that would otherwise have been available for processing at those straddle plant facilities.

1. Do the existing NGL Extraction Conventions need to be changed in order to address perceived inequities in the existing conventions, thereby promoting the economic, orderly and efficient development of Alberta's natural resources? If they need to be changed, how should they be changed to deal with these inequities?

In addressing this issue the Board must consider:

- (a) What are the NGL Extraction Conventions and how are they documented or otherwise established?
- (b) Who has the legal entitlement to NGL extraction rights from the common stream?
- (c) Are the NGL Extraction Conventions consistent with the legal entitlement to NGL extraction rights?
- (d) What inequities result from application of the NGL Extraction Conventions?
- (e) What options (and the pros and cons of each), including without limitation those considered in the NGL Extraction Convention Task Force (NECTF) Report, are available to address these inequities?
- (f) What are the potential impacts to all stakeholders of suggested changes to the NGL Extraction Conventions?

This question relates in whole or in part to Issues 1, 3, 7, 8, 9, 10 and 11 on the Preliminary List of Issues.

2. In addressing the perceived inequities with the NGL Extraction Conventions, does the Board need to consider if further modifications to these conventions and/or the development of other rules and guidelines are required in the interest of:
 - promoting the economic, orderly and efficient development of Alberta's natural resources; and/or
 - sustaining and developing the natural gas industry, Alberta's pipeline, extraction and petrochemical industries?

If modifications to the NGL Extraction Conventions or new rules and guidelines are required, what should they be?

In addressing this issue the Board must consider:

- (a) What are the relevant forecasts to consider?
- (b) How can the development of Alberta's gas resources, both NGL rich gas and lean gas, be encouraged without creating inequities with respect to NGL extraction rights, impacting efficiencies and the sustainability of the extraction and petrochemical industries or causing undue impact to ratepayers?
- (c) How can the extraction and upgrading of NGLs within the Province of Alberta be encouraged to the maximum extent practical while providing the owners of NGL extraction rights with fair compensation?
- (d) Should sidestreaming, co-streaming, or the ability to by-pass extraction be restricted?

- (e) If the answer to (2d) is "yes", what restrictions are appropriate and what are the rules and criterion to be applied in assessing when a restriction is to be applied and in determining what the nature of the restriction will be?
- (f) Do NGL extraction conventions as they apply to all EUB regulated pipelines and EUB regulated straddle facilities on NEB regulated pipelines need to be consistent in order to avoid unfair competitive advantages or unfairness to shippers, pipeline/facility owners or buyers of natural gas or NGLs?
- (g) Are modifications desirable in order to encourage the use of Alberta pipeline and extraction facilities by gas sourced from outside of Alberta?
- (h) What are the potential impacts to all stakeholders of suggested modifications to the NGL Extraction Conventions and from any new rules or guidelines?

This question relates in whole or in part to Issues 1, 2, 4, 5, 6, 8, 9, 10 and 11 on the Preliminary List of Issues.

3. In the event that any changes to the existing NGL Extraction Conventions result from the Inquiry or in the event that the Board provides for the development of new rules or guidelines relating to NGL extraction matters, how should these changes be implemented?

In addressing this question the Board must consider:

- (a) What action is required and by whom in order to implement changes to the NGL Extraction Conventions and/or new rules or guidelines and over what period of time?
- (b) Who should bear any associated costs?
- (c) Do any existing arrangements need to be grandfathered?
- (d) Do these new conventions, rules and guidelines require periodic reconsideration?

In considering the Inquiry Principle Issues the Board will, as requested by many parties, have regard for the impact on existing contracts and existing infrastructure investment.

The Board does not intend to review the new Incremental Ethane Extraction Program policy announced by Alberta Energy on September 29, 2006, nor does it intend to undertake a review of the terms and conditions of the existing Ethane Policy. However, the Board may, in the interest of the economic, orderly and efficient development of Alberta's natural resources, consider matters relevant to the public interest principles behind the Ethane Policy and may direct measures or make recommendations directed at continuing a sustainable extraction and petrochemical industry in the Province.

With the above focus, the Board trusts that the context, relevance and interdependence of the issues outlined in the Preliminary List of Issues have been clarified. This additional focus is sufficient, in the Board's view, to proceed to the submission of evidence by parties without holding a pre-hearing conference and with minimal change to the Preliminary List of Issues. Attachment 3 is the Final List of Issues for the Inquiry.

Parties are invited, but not required, to organize their evidence submissions, information requests and argument by addressing the Inquiry Principal Issues and sub-issues. In following this format, Parties are not restricted to the above list of sub-issues in making their submissions and may

address other sub-issues within the scope of the proceeding. This suggestion is intended to ensure that the respective positions of Parties on the issues before the Inquiry are organized, clearly presented and easily contrasted which should lead to a more efficient process overall.

Role of Inquiry Expert

In preparing the initial scope for the Inquiry it became evident that the assistance of a recognized industry consulting firm with expertise in matters before the Inquiry, independent of all Parties and the Board, would be of assistance when considering the various issues to be examined by the Inquiry. The Board has engaged Ziff Energy Group as the Inquiry Expert. The Inquiry Expert will have the responsibilities outlined below.

1. The Inquiry Expert will consider the submissions from Parties to determine which areas require clarification and to identify any informational gaps in the evidence before the Board. The Inquiry Expert will submit information requests to try and achieve clarification and to fill in information gaps. Where it is unable to obtain missing information from parties it will attempt to provide the necessary information in a report (Report) to be filed with the Inquiry. Missing information to be supplied by the Inquiry Expert will primarily be with respect to providing data and forecasting information as well as completing background information from Alberta and other relevant jurisdictions.
2. The Inquiry Expert will conduct an analysis of the evidence of each Party and where the evidence is in significant conflict, the Inquiry Expert will comment in the Report on the points of conflict and highlight the strengths and weaknesses of the positions of the respective Parties.
3. The Inquiry Expert may also identify and assess in the Report one or more possible alternative approaches (or modifications to proposals put forward by Parties) to the matters before the Inquiry. The Inquiry Expert will advance an alternative approach(s) if it is of the opinion that such an alternative approach(s) would likely align with the overall Alberta public interest to a greater extent than any of the approaches suggested by the Parties. The Report will also assess the benefits, limitations and market impacts of any suggested alternative approach(s).

Dealings between the Board and the Inquiry Expert will be limited to administrative and financial matters. Neither the Board nor Board staff will have contact with the Inquiry Expert or review any drafts of the Report.

The Report will be made available to Parties and the Board at the same time. The Board and Parties will have the opportunity to ask the Inquiry Expert information requests and to cross-examine the Inquiry Expert at the hearing. In addition, Parties will be given the opportunity to file written rebuttal evidence in response to the Report.

The Inquiry Expert will not cross-examine Parties and will not provide final argument in the proceedings.

In its deliberations, the Board will consider the Report, information request responses and testimony of the Inquiry Expert as additional evidence for its consideration bearing in mind the independent nature of that evidence.

Procedural Schedule

In light of the Board's June 27, 2007 letter extending the date for filing of evidentiary submissions the Board has modified the procedural schedule. The Revised Procedural Schedule is provided in Attachment 4. The Board has revised the Procedural Schedule at this time to allow parties sufficient time to plan for critical dates and to arrange for the appearance of witness at the hearing. Given the number of parties to the Inquiry and the need to coordinate the schedules of many witnesses, the Board anticipates that it will be difficult to provide for further extensions to the commencement date of the hearing.

As stated in the Board's June 27, 2007 letter, the Board is optimistic that Parties with like interests will now have the opportunity to work together to present joint submissions and seat joint panels for the oral portion of the Inquiry. This would assist all Parties by improving efficiency of the process.

Inquiry Background Documentation

The Board has added the following materials to the record of this proceeding as background documentation which may be of assistance to Parties in the preparation of their submissions.

ERCB Report D88-D: Alberta Ethane Policy, Report on Implementation (April 1988)

NGL Extraction Convention Task Force (NECTF) Report (September 28, 2005)

Decision D 96-07 Gulf Canada Resources Limited - Strachan Gas Plant Approval Amendment NGTL Gas Sidestreaming Application (September 26, 1996)

Decision 2004-006 Solex Gas Processing Corp. - Application to Amend a Gas Processing Scheme and for Natural Gas Pipelines (January 27, 2004)

Information Letter IL 90-09 Government of Alberta Ethane Policy Implementation Procedures (July 16, 1990)

Board Letter to Interested Parties in Response to NGL NECTF Report (July 24, 2006)

If you have any questions regarding this matter, please contact either Kim Eastlick by email at kim.eastlick@eub.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@eub.ca or by telephone at (403) 297-3539.

Yours truly,

(sent via email)

Heather Gnenz and Kim Eastlick
Application Officers

cc. Interested Parties

Attachments

Attachment 1 – List of Parties

Alberta Department of Energy (ADOE)
Alberta Envirofuels Inc. (AEF)
Alberta Ethane Gathering System, L.P. (AEGS)
Alliance Pipeline Ltd. (Alliance)
AltaGas Ltd. (AltaGas)
AltaGas Utilities Inc. (AUI)
ATCO Midstream Ltd.
ATCO Pipelines (AP)
Aux Sable
BP Canada Energy Company (BP)
Canadian Association of Petroleum Producers (CAPP)
Canadian Chemical Producers' Association (CCPA)
Cargill Limited (Cargill)
ConocoPhillips Canada Limited (ConocoPhillips)
Coral Energy Canada Inc. (Coral)
Devon Canada Corporation (Devon)
Direct Energy Marketing Limited (DEML)
Dow Chemical Canada Inc. (Dow)
EnCana Corporation (EnCana)
Export Users Group (EUG)
FB Energy Canada Corp.
Gaz Métro Limited Partnership (Gaz Métro)
Government of the Northwest Territories (GNWT)
Granite Gas Products Inc.
Husky Energy Marketing Inc. (Husky)
Imperial Oil Resources & ExxonMobil Canada Energy (the Companies)
Industrial Gas Consumers Association of Alberta (IGCAA)
Inter Pipeline Fund (Inter Pipeline)
Keyera Energy Partnership (Keyera)
Kinder Morgan Cochin ULC (Cochin)
Nexen Inc. (Nexen)
NOVA Gas Transmission Ltd. (NGTL)
NOVA Chemicals Corporation (NOVA Chemicals)
Pacific Gas and Electric Company (PG&E)
Pembina Pipeline Corporation (Pembina)
Provident Energy Ltd.
Quicksilver Resources Canada Inc. (QRCI)
Shell Canada Limited (Shell)
Spectra Energy Empress L.P. (Spectra)
State of Alaska
Straddle Plant Group
Talisman Energy Inc. (Talisman)
Tenaska Marketing Canada, a division of TMV Corp. (Tenaska)
Taylor NGL Limited Partnership
Terasen Gas Inc. (TGI)
Utilities Consumer Advocate (UCA)
Union Gas Limited (Union)

Attachment 2 EUB INQUIRY INTO NGL EXTRACTION MATTERS

FINAL SCOPING DOCUMENT

1. Introduction

The Alberta Energy and Utilities Board (EUB or Board) has undertaken to conduct an inquiry into matters related to natural gas liquids (NGL) extraction from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (the Inquiry).

The Inquiry will examine issues related to NGL extraction from the perspective of maximizing the economic, orderly and efficient development of Alberta's natural resources in the public interest. The issues that the Inquiry will examine include, without limitation:

- existing extraction conventions
- potential dilution of the common stream energy content by lean gas associated with Coal Bed Methane (CBM)
- growing intra-Alberta consumption demand for natural gas
- potential for northern gas; and
- Alberta regulated Straddle facilities on NEB regulated pipelines.

2. Purpose of the Inquiry

The evolution of the Alberta natural gas, pipeline, extraction and petrochemical industries and related gas, transportation and NGL markets since the implementation of the Alberta Ethane Policy¹ in July 1990 (set to expire June 30, 2008) have convinced the Board that there is a need for a timely and comprehensive reexamination of existing rules, contractual arrangements and practices with respect to the extraction of NGLs from the common natural gas stream transported through pipeline transmission systems or processed by facilities that are regulated by the EUB (NGL Extraction Conventions). The need for such a review is made further apparent in light of anticipated future developments including potential use of EUB regulated pipelines to transport increased amounts of gas sourced outside of Alberta, increasing development of CBM and the growing market for gas within the Province. This Inquiry will consider the NGL Extraction Conventions to determine if changes are required in the public interest.

3. Assumptions

The Board considers that it would be beneficial for parties to understand the general assumptions that the Board has relied upon in scoping the issues for the Inquiry. Accordingly, the Board has listed below the assumptions that it has relied upon in preparing this Final Scoping Document. The Board recognizes that these assumptions can sometimes be in conflict.

- (a) In providing for the economic, orderly and efficient development of Alberta's natural resources it is in the Alberta public interest to encourage to the maximum extent practical, the extraction of NGLs within the Province of Alberta, for use, upgrading or sale within Alberta while providing the NGLs owners with fair compensation.

¹ As reflected in IL 90-09 dated July 16, 1990, Section 35 of the *Oil and Gas Conservation Act* RSA 2000, c. 0-6 and Part 9.1 of the *Oil and Gas Conservation Regulations* AR 151/71

- (b) Clear rules and procedures with respect to NGL ownership and extraction are in the public interest.
- (c) Unless the public interest otherwise requires, producers may extract NGLs from their own production, at the field plant upstream of injection into an EUB regulated pipeline.
- (d) It is in the public interest to minimize proliferation of NGL extraction facilities where proliferation may result in decreased net NGL extraction within Alberta, increased net energy use per unit of NGL extracted within Alberta and/or result in greater land use or environmental impact than is necessary.
- (e) It is in the public interest to optimize the energy efficiency of NGL extraction.
- (f) It is in the public interest to maintain a viable extraction and petrochemical industry in the Province.
- (g) It is in the public interest to maximize efficient use of EUB regulated transmission pipeline infrastructure.
- (h) It is in the public interest to maintain liquid and efficient markets for natural gas.
- (i) NGL Extraction Conventions and the Alberta Ethane Policy have historically worked in the general public interest but require review at this time.
- (j) Presently the owner of the natural gas being transported on EUB regulated pipelines has the right to sell its equivalent energy value of the natural gas from the common stream or to take redelivery at an existing point of delivery of its equivalent energy value of the natural gas from the common stream
- (k) Absent a public interest reason to differentiate among EUB regulated pipelines, Producer/Receipt shipper rights with respect to NGL ownership should be equivalent.

4. Objectives

The Board has established the following objectives for the Inquiry:

- (a) Obtain comprehensive stakeholder participation in the Inquiry.
- (b) Generate an Inquiry Decision in mid year 2008 which will:
 - i. Articulate clear principles relating to NGL extraction aimed at codifying appropriate extraction conventions with specific directions, if required, to EUB regulated pipelines with respect to tariff amendments and other directions to reflect the findings of the Board.
 - ii. Identify new conditions, if any, required when issuing facility licenses, permits or approvals, to reflect the findings of the Board.
 - iii. Identify any future steps that are required in order to complete implementation of Inquiry principles, findings and directions.

5. Preliminary List of Inquiry Issues

See attached Attachment 3.

6. Tentative Procedural Schedule

See attached Attachment 4.

Attachment 3

EUB INQUIRY INTO NGL EXTRACTION MATTERS

FINAL LIST OF ISSUES

1. Overview of NGL Extraction Conventions and Markets in Alberta
 - a. Existing Pipeline and Straddle plant NGL extraction rights, conventions and practices on the following EUB regulated pipelines:
 - i. NGTL
 - ii. ATCO Pipelines
 - iii. AltaGas Utilities Inc. (AUI)
 - b. NGL Extraction Conventions, current and proposed for other EUB regulated facilities on non EUB regulated pipelines (i.e. Aux Sable Canada Ltd. North Sable Extraction Plant - Fort Saskatchewan)
 - c. Alberta NGL short and long term supply forecasts and short and long term Alberta NGL Market forecasts
 - d. Straddle plant capacities and utilization (existing and forecasted)
 - e. NGL field extraction capacities and utilization (existing and forecasted)
 - f. Timing and anticipated NGL content of gas presently sourced and forecasted to be sourced, from outside Alberta to be transported utilizing EUB regulated pipelines.
 - g. Existing and forecast quantity of gas consumed within Alberta, exported from Alberta without NGL extraction, and off-gases from oilsands upgrading
2. In light of the June 30, 2008 expiry of the existing Alberta Ethane Policy, is it necessary, for the economic, orderly and efficient development of Alberta's natural resources, or other public interest reasons to implement measures to ensure a sustainable extraction and petrochemical industry in the Province?
3. Perceived inequities with Present NGL Extraction Conventions on NGTL:
 - a. Producer/Receipt shippers delivering gas with below common stream NGL content into NGTL who also hold export delivery service receive benefit of common stream NGL content.
 - b. Producer/Receipt shippers delivering gas with above common stream NGL content into NGTL who also hold export delivery service only receive benefit of common stream NGL content.
 - c. Producer/Receipt shippers with production that enters the NGTL system downstream of extraction plants who also hold export delivery service obtain value for NGL in the common stream even though their gas cannot be processed physically.
 - d. Producer/Receipt shippers with production that enters the NGTL system that is delivered upstream of an extraction facility may lose the benefit of NGL extraction.

- e. Double Dipping: Producer/Receipt shippers who extract (NGLs) in the field who also hold export delivery service obtain value for NGL in the common stream.
 - f. Producer/Receipt shippers who do not hold export delivery service cannot obtain direct access to the NGLs in the gas stream once the gas enters the NGTL system.
 - g. Producers who do not hold export delivery service and therefore do not share in value of NGL in the common stream are non-the-less responsible for NGL royalty payments.
4. Clarification of public interest criteria related to "sidestreaming"¹ and "co-streaming"² projects with respect to matters such as overall energy efficiency, impact of facilities proliferation, NGL entitlement, equity (fairness) and optimization of resource value.
 5. Potential dilution of the common stream energy content as a result of the increasing importance of Coal Bed Methane (CBM) and potential solutions including alternative lean gas facilities design criteria.
 6. Consideration of Issues related to NGL extraction from gas sourced from outside of Alberta that is transported on EUB regulated pipelines, including understanding positions of:
 - a. Ex-Alberta producers, shippers, governments, connecting pipelines, and capital markets; and
 - b. Alberta producers, shippers, pipelines, extraction industry, petrochemical industry and government
 7. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, including financial impact to gas and NGL market participants, and impacts to existing contracting practices, NIT transactions, storage arrangements, ex-Alberta (upstream and downstream) implications and NGTL rate implications.
 - a. Status Quo
 - b. Equalization
 - c. Single Value Bucket
 - d. Receipt Contracting
 - e. Producer Directed
 - f. Regulated Business
 - g. Other
 8. Entitlement to NGL Value on ATCO Pipelines system

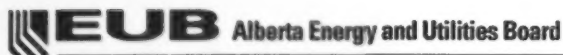
¹ The Board has refined the definition of "Sidestreaming" that was referred to in the Preliminary List of Issues. "Sidestreaming" refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream upstream of existing straddle plant facilities thereby reducing the NGL content of the gas (richness of the gas) that would otherwise have been available for processing at the downstream straddle plant facilities.

² Co-streaming refers to new or existing gas processing facilities that would access gas from an EUB rate regulated natural gas transmission pipeline to extract NGLs and then reinject the processed gas into the commingled stream downstream of existing straddle plant facilities thereby reducing the volume of gas that would otherwise have been available for processing at those straddle plant facilities.

- a. Review of existing practices, any perceived inequities and opportunities for NGL extraction
 - b. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, as they may apply
 - c. Consideration of pipeline interconnection issues
 - d. Tariff and rate implications of changes
9. Entitlement to NGL Value on AUI's system
- a. Review of existing practices, any perceived inequities and opportunities for NGL extraction
 - b. Consideration of *NGL Extraction Convention Task Force* Report alternatives, or other alternatives, as they may apply
 - c. Consideration of pipeline interconnection issues
 - d. Rate implications of changes
10. Is it desirable to implement NGL component tracking gas on transmission pipelines? Exploration of potential means and methodologies to be used to implement component measurement and tracking?
11. Consideration of NGL Extraction Conventions with respect to EUB regulated facilities on non EUB regulated pipelines including the form of licenses, permits or approvals.

Attachment 4**EUB INQUIRY INTO NGL EXTRACTION MATTERS
Procedural Schedule**

Step	Tentative Date(s) (2007)	Revised Date(s) (2007 unless specified)
Inquiry Notice and Scope Submission Request	June 1	June 4
Scope Submissions Due	June 15	June 15
Inquiry Scope Finalized	July 6	July 6
Parties Submissions (simultaneous)	July 23	August 28
Information Requests to Parties	August 7	September 18
Information Responses	August 20	October 9
Rebuttal Submissions	September 10	October 23
Inquiry Expert Submission	September 24	November 6
Information Requests to Inquiry Expert	October 2	November 20
Information Responses	October 9	December 4
Rebuttal to Inquiry Expert Evidence	October 23	December 18
Inquiry	November 5-30 (as required)	January 29 - February 29, 2008
Argument		To be determined
Reply Argument		To be determined



Calgary Office 640 – 5 Avenue SW Calgary, Alberta Canada T2P 3G4 Tel 403 297-8311 Fax 403 297-7336

Electronic Notification

June 21, 2008

To: Interested Parties

APPLICATION NO. 1513726

INQUIRY INTO NGL EXTRACTION MATTERS (INQUIRY)

**BOARD PROCEDURAL RULING REGARDING IMPACT OF THE APPLICATION BY
TRANSCANADA PIPELINES LIMITED TO THE NATIONAL ENERGY BOARD**

Introduction

On June 17, 2008, TransCanada PipeLines Limited (TransCanada) filed an application (Application) with the National Energy Board (NEB) to bring the TransCanada Alberta System (NGTL System) owned by its wholly-owned subsidiary NOVA Gas Transmission Ltd. (NGTL) under the jurisdiction of the federal regulator. In the Application, TransCanada applied for a certificate of public convenience and necessity (CPCN) with respect to the Alberta System and proposed that the Application be considered in two phases. Phase I would consider the constitutional question of whether the NGTL System is now properly within federal jurisdiction and subject to regulation by the NEB. TransCanada requested that the NEB issue a declaratory order confirming NEB jurisdiction. Phase II would consider whether the NGTL System is required by the present and future public convenience and necessity with a request to issue a CPCN. Phase II would only proceed if the NEB determined the NGTL System to be within federal jurisdiction in Phase I. TransCanada requested that any jurisdictional declaratory order would be made effective upon the issuance of the CPCN.

The Application and an accompanying press release were added by Board staff to the record of the Inquiry as Exhibits 053-58 and 053-57, respectively, on June 17, 2008, being the 23rd day of the oral phase of the Inquiry. The Board set aside Friday, June 20, 2008 to allow all interested parties to make submissions on the implications of the Application to the Inquiry, to the filed evidence and with respect to the appropriateness of continuing with the oral phase of the Inquiry at this time.

The Board heard seven hours of submissions from nineteen parties. Positions of the parties varied significantly on a number of issues.

The writer has been authorized by the Board to convey the within Ruling.

Issues

The Board considers that a ruling is required on the following matters.

1. Does the Board have the jurisdiction to continue with the Inquiry insofar as it may relate to the NGTL System?

2. In the event the Board has the jurisdiction to proceed with the Inquiry, should the Board proceed in light of the Application?
3. If the Board proceeds, are there any process adjustments required? In particular:
 - a. should NGTL be asked to present a panel knowledgeable as to both the Application and NGTL's evidence in this Inquiry? and
 - b. should parties who wish to supplement their pre-filed evidence be allowed to do so in order to address any substantive changes that may be required as a result of the filing of the Application?

Ruling Synopsis

The Board finds that it continues to have jurisdiction with respect to the NGTL System until such time as a competent authority determines otherwise. The Board sees no reason to terminate the Inquiry or to adjourn it pending an NEB decision on the Application. Further, the Board is not convinced that amendments to the scope or to the objectives of the Inquiry are necessary.

NGTL will be required to present a panel knowledgeable with respect to the Application and the NGTL evidence filed in this Inquiry on Tuesday, June 24, 2008. Following the NGTL panel, the Taylor NGL Limited Partnership (Taylor) panel may be seated. Any party that has not yet appeared will have the option of proceeding following the Taylor panel.

Upon completion of cross-examination of the Taylor panel and any other panel that wishes to proceed, the Inquiry will be adjourned, if necessary, until July 7, 2008 to provide an opportunity to file supplemental submissions to those parties who wish to do so. Supplemental submissions shall be solely for the purpose of amending or supplementing pre-filed evidence to reflect substantive changes necessitated by the filing of the Application. Supplemental submissions must be filed prior to 3:00 p.m. July 3, 2008.

Detailed Ruling

1. Does the Board have the jurisdiction to continue with the Inquiry insofar as it may relate to the NGTL System?

The Board finds that it continues to have jurisdiction with respect to the NGTL System until such time as a competent authority determines otherwise. No authority has been provided to the Board which would suggest that the Board has lost its jurisdiction merely as a result of the filing of the Application, or based on the assertion of TransCanada in the Application that the NGTL System is by law properly within Canadian federal jurisdiction. To the contrary, the Board agrees with those parties that suggested that the Board and its successor tribunal, the Alberta Utilities Commission, have a statutory obligation to regulate NGTL and to do so in the Alberta public interest.

The Board agrees with parties that submitted that jurisdiction is a matter of law and until such time as a competent authority determines, as a matter of law, that jurisdiction over the NGTL System is properly vested in another tribunal, the Board will not abdicate its responsibilities by failing to carry out its statutory mandate to regulate the NGTL System.

2. In the event the Board has the jurisdiction to proceed with the Inquiry, should the Board proceed in light of the Application?

Some parties suggested that jurisdiction to continue with the Inquiry is not the issue, rather, the appropriate questions to consider are whether, or to what extent, the Board should continue with the Inquiry in the circumstances. The Board has carefully considered this issue. In particular, the Board has considered the potential for partial duplication of proceedings before a different regulator; the potential that any change to an extraction convention directed by the Board may not be fully implemented at the time a future regulator may assume jurisdiction over the NGTL System; and the heavy demands on the time and resources of the parties to the Inquiry. The Board has also considered that the Inquiry, in part, is dealing with a matter that has been at issue for at least a decade and several parties stated or implied that further delay would result in prejudice to them.

The Board agrees with those parties that submit the Board must deal with the facts as they exist today, and must carry out its public interest responsibilities as they exist today. The granting of the relief requested by TransCanada is uncertain. Further, a great deal of uncertainty was expressed by parties in relation to the timing of any approval. It is also unclear if references or appeals to the Courts would be required before matters are finally resolved. In light of these uncertainties, the Board considers it not only appropriate, but necessary in the public interest, to continue with the Inquiry process.

Although the Board recognizes the concerns expressed by some parties to the hearing that decisions of the Board relating to the NGL extraction convention as it applies to NGTL could potentially be overturned or amended in some fashion by a successor regulator, the Board does not consider this to be sufficient reason to unduly adjourn, delay the Inquiry or to amend its scope.

The Board considers it to be in the public interest to complete the Inquiry and to render a report, utilizing the substantial evidentiary record before it, a record which was accumulated with broad stakeholder participation and an independent Inquiry Expert. The Inquiry is a unique opportunity to consider, in a comprehensive fashion, various NGL and resource related issues directly relevant to the public interest. Further, it represents the culmination of a process reflecting issues and concerns that have been outstanding since before the 1996 Gulf Strachan Decision (Decision D96-07).

Accordingly, the Board does not consider it appropriate to terminate the Inquiry or to adjourn it pending an NEB decision on the Application. Further, the Board is not convinced that amendments to the scope or to the objectives of the Inquiry are necessary.

3. *If the Board proceeds, are there any process adjustments required? In particular:*
- a. *should NGTL be asked to present a panel knowledgeable as to both the Application and NGTL's evidence in this Inquiry?; and*
 - b. *should parties who wish to supplement their pre-filed evidence be allowed to do so in order to address any substantive changes that may be required as a result of the filing of the Application?*

The Board considers that it would assist the Board and parties if NGTL provides a panel for cross-examination, exclusively for the purposes of addressing changes, amendments or corrections, if any, to NGTL's pre-filed evidence and testimony necessitated by and related to the filing of the Application. The Board does not consider it appropriate that NGTL witnesses be

questioned with respect to any aspect of the Application not directly related to a matter before the Board in this Inquiry.

Accordingly, the Board directs NGTL to provide a witness panel for cross-examination on Tuesday, **June 24, 2008 at 9:00 a.m.** The panel should be prepared to address the issues outlined above.

Given the submissions by counsel for Taylor that Taylor had no requirement to supplement its evidence in light of the Application, and recognizing Taylor's desire to ensure the Inquiry proceeds in a timely manner, the Board assumes that the Taylor panel would be prepared to be seated for cross-examination immediately following the NGTL panel. The Board asks Taylor to advise the Board by **3:00 p.m. on Monday June 23, 2008** if that panel wishes to proceed following the appearance by NGTL.

The Board has carefully considered representations by counsel for certain parties that pre-filed evidence may have been different had the Application been filed prior to the submission of this evidence. The Board agrees that the filing of the Application is a material event. The Board notes that the parties that have raised the above concern have not, as of yet, completed their appearances at the Inquiry. The Board offers these parties the option of proceeding with their appearances following the Taylor panel and addressing any changes in position at that time. In the alternative these parties may file supplemental submissions and appear at a later date. Such supplemental submissions must relate to a substantive change in policy position or supporting evidence which is a direct consequence of the filing of the Application, and must be filed by **3:00 p.m. on July 3, 2008**. Panels would be seated to address all evidence including the supplemental submissions commencing **Monday July 7, 2008**.

The Board asks any party that has not completed its appearance, to advise the Board by **3:00 p.m. on Monday June 23, 2008** whether that party wishes to proceed following the Taylor panel or following the filing of supplemental submissions.

All submissions and correspondence should be sent via electronic mail to filings@auc.ab.ca. If you have any questions, please contact either Kim Eastlick by email at kim.eastlick@ercb.ca or (403) 297-4325 or Heather Gnenz by e-mail at heather.gnenz@auc.ab.ca or by telephone at (403) 592-4419.

Yours truly,

Brian C. McNulty
Board Counsel